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REPEALS BY IMPLICATION IN FLORIDA: A CASE STUDY

ERNEST E. MEANS*

I. INTRODUCTION

By chapter 74-310, the 1974 Florida Legislature enacted a comprehensive Administrative Procedure Act (hereafter, APA) dealing with all of the usual facets of administrative procedure.¹ As is always the case, there was a problem concerning the relationship that was to exist between the new act and existing statutory provisions on the same subject—that is, those prescribing the various administrative procedures to be followed by particular state agencies. Chapter 74-310 dealt with this problem forthrightly; in section 3, the act stated the intent of the legislature “to make uniform the rulemaking and adjudicative procedures used by the administrative agencies of this state.” Section 3 then continued:

To that end, it is the express intent of the legislature that the provisions of this act shall replace all other provisions in the Florida Statutes, 1973, relating to rule making, agency orders, administrative adjudication or judicial review, except marketing orders adopted pursuant to chapters 573 and 601, Florida Statutes, and that the division of statutory revision of the joint legislative management committee is directed to prepare a reviser’s bill to conform the Florida Statutes to such intent.²

It is difficult to imagine language better calculated to bring about statewide uniformity of administrative procedures. After all, its apparent effect was to leave the new act as the sole statutory basis for administrative procedures relating to rulemaking, adjudication, agency orders, and judicial review.

Unfortunately, this apparent certainty proved illusory. Even now, the extent to which statewide uniformity was actually achieved by the 1974 act is very much in doubt. The reviser’s bill which would have deleted from the Florida Statutes all existing statutory provisions “relating to” the named elements of administrative procedure was never enacted by the legislature. Finally, during the 1978 legislative session—four years after the enactment of chapter 74-310 and

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¹ Ch. 74-310, 1974 Fla. Laws 952 (current version at FLA. STAT. ch. 120 (1977 & Supp. 1978)).

² Id. § 3 (current version at FLA. STAT. § 120.72(1) (a) (Supp. 1978)).
its forthright statement of the extent to which that act replaced existing law—the legislature amended the statement of legislative intent. The intent to make uniform the rulemaking and adjudicative procedures used by state agencies was retained; however, preexisting statutory provisions were to be "superseded" (the earlier word was "replaced") only "to the extent such provisions conflicted with chapter 120."  

The limited objective of the present paper is to trace the events and decisions by which the Florida Legislature boldly opted for complete, uncompromising statewide uniformity; then vacillated when faced with the harsh consequences of its decision; and finally, after four years, substantially retreated from the objective it had set. It will discuss the theory and extent of the repeal that occurred with the enactment of the new APA. It will further inquire whether, by some theory of the revival of repealed statutes, the option exercised by the 1978 legislature was one properly before it.

II. THE APA REVISER'S BILL

In legal contemplation, reviser's bills are much like other legislative bills. They must be introduced and go through the legislative process of being passed by both houses and presented to the Governor for his approval. However, they differ from other legislative proposals in at least one important respect: if properly prepared, they are utterly devoid of any consideration of policy. Reviser's bills are prepared by the reviser for the sole purpose of purifying the language of the Florida Statutes. 4 Their enactment is absolutely essential if the codified law is to remain current and useful. Printer's errors, editorial errors, and the like need to be corrected. Statutory provisions that have become obsolete with the passage of time or the occurrence of other statutory contingencies need to be deleted. The language of the statutes needs to be conformed to implied amendments and repeals that have obviously occurred as a result of successive legislative enactments.

It is difficult to imagine a piece of legislation other than a reviser's bill that does not carry at least some suggestion of public policy; after all, even the naming of a bridge implies public approval of the namesake. However, the reviser's bill is intended only to conform the language of the published law to some change that has already occurred or to a legislative intent that has already been announced or otherwise established. Anything in a reviser's bill that does more

than this is in error and should be deleted from the bill prior to legislative approval. The reviser's bill that was mandated by chapter 74-310 differed from other reviser's bills only in that it was expressly mandated. It should have been prepared even in the absence of the mandate.

A. Policy Decisions in Preparation

Although the basic intent of the Florida Legislature in the enactment of chapter 74-310 was very forcefully and clearly stated, it was still necessary for the reviser and his staff to make a number of what they considered "policy decisions." On the theory that it will enhance the reader's appreciation and understanding of the true dimensions of the problem under discussion, these issues and their solutions will be briefly described.

1. Delete or Conform?

There was some initial confusion among the reviser's staff concerning the function that was to be performed by the reviser's bill. Earlier, at the request of the legislative leadership, the reviser's staff had reviewed the repealer section that had been added to Committee Substitute for Senate Bill 892 in the House of Representatives, which was ultimately enacted into chapter 74-310, the Administrative Procedure Act. That earlier version of Committee Substitute for Senate Bill 892 provided that:

Section 3. To conform other statutes to this act, the following laws are repealed or amended. This list is not to be considered complete for it is the intent of the legislature that all rule-making and hearings . . . following the effective date of this [sic] be done in accordance with the provisions of this act. Provided, however, that this act is not intended to repeal time requirements provided by law which are not specifically repealed by this section.

There then followed seventy-seven subsections consisting of amendments and repeals of existing provisions of the Florida Statutes. However, the bill indicated that the list was not to be considered complete.

On the basis of its review, the reviser's staff had concluded that

5. It is arguable that reviser's bills are unique in being the only form of legislative proposal that every legislator has a positive duty to support with his vote. On the one hand, they are devoid of any policy implication with which he can disagree. On the other hand, they are essential to the accurate publication of the law, a goal to which the legislature and every member is surely committed.

the specific repeaters and amendments did not accurately reflect the intended impact of the proposed act on existing statutory provisions, in that they eliminated numerous provisions for which the proposed bill contained no substitutes. Since it was apparent that there was not sufficient time in the half session that remained to do the massive spadework required to identify the provisions that had to be dealt with, the staff recommendation was that the section containing specific repeals and amendments should be cut out of the bill and be replaced by a strong statement of legislative intent that conflicting or superseded provisions of existing law were repealed by implication. There would be plenty of time to prepare the specific repealers in time for enactment at the next session.7 The recommendation was adopted.

At first, the staff assumed, perhaps carelessly, that it was proceeding under the same guidelines that had guided the drafting of the earlier repealer section. However, they soon became aware that the final version of the bill, enacted as chapter 74-310, proceeded on a very different theory. The staff concluded that its task was to prepare a bill that marked for deletion all provisions of the 1973 Florida Statutes that related to “rule-making, agency orders, administrative adjudication or judicial review,” as having been “replaced by” the new APA. Not only was this the clear meaning of the language employed in its mandate, but it made good sense. How better to achieve the stated primary goal of statewide uniformity than to make the new APA the sole statutory basis for the administrative procedures of all state agencies? Of course, it was anticipated that some corrective drafting would be required as a result of some of the deletions—“replacing our divots,” they called it.

2. Format

Normally the repeal of a section of the Florida Statutes, or of any whole segment of a section, is accomplished by a simple statement in the directory language of a section of the bill. However, in the case of this bill, the very purpose of which was to mark for deletion statutory provisions relating to the various aspects of administrative procedure, it was decided that the full text of all language proposed to be deleted should be set out in the bill for the convenience of those who would later consult it for review or other purposes. The advantage of this procedure seemed to outweigh the disadvantage resulting from the added bulk.

7. Letter from Ernest Means, Director of Division of Statutory Revision, to Senator Barron, Chairman of the Senate Committee on Rules and Calendar (Apr. 30, 1974).
Another decision as to bill format was intended to reduce the bulk of the final bill. Under normal bill drafting procedure, a separate section of the bill—with separate directory language—is devoted to each Florida Statutes section dealt with, or each group of related sections dealt with similarly. Since the purpose of this bill was simply to identify language that was to be deleted, it seemed appropriate to include all of the hundreds of sections involved in a single section of the reviser’s bill. By thus avoiding the necessity of repeating the directory language of hundreds of sections, it was estimated that at least fifty pages were saved. Since the sections were in numerical order, there was no cost in loss of convenience.

3. Construing the Mandate

Although the language of section 3 of the act was very clear in its statement of basic legislative intent, it was evident that it could not be applied literally. The words, “the provisions of this act shall replace all provisions . . . relating to rule-making, agency orders, administrative adjudication or judicial review” would, for example, have required the deletion of provisions relating exclusively to agencies that were exempt from the act. Therefore, the passage in question was applied as though it read, “provisions . . . are replaced . . . insofar as they relate to the agencies to which chapter 120 is intended to apply.”

Similarly, if literally applied the words requiring the deletion of provisions relating to judicial review would have reached judicial review provisions that had nothing to do with administrative procedure. Therefore, that passage was applied as though it read, “judicial review of administrative action.”

4. Procedure Versus Substance

Applied literally, the provision that the act was to replace provisions “relating to . . . rule-making” would require deletion of the various statutory grants of rulemaking authority to specified agencies. Obviously, this could not have been intended. The new act was procedural and could not have been intended to replace substantive grants of rulemaking authority. This consideration raised the question of just where the line was to be drawn between matters of procedure and matters of substance in identifying the provisions that were to be deleted.

No lengthy contemplation was required to reach the conclusion

8. A subsequent reviser’s bill initiated an amendment that incorporated the added words into the statute.
that a technical distinction of the kind that often divides the members of an appellate court could not have been intended. 9 The decision was that the preparation of the reviser's bill should proceed on the basis of a colloquial definition of procedure. If a provision under scrutiny had simply to do with the way something was to be done, as opposed to the grant of authority to do it, and if a provision related to one of the named elements of administrative procedure, it would be marked for deletion.

5. Trials De Novo

It occurred early to the reviser's staff that the judicial procedure involved in a trial de novo differed substantially from that usually employed in the review of administrative action. Should provisions for trial de novo be marked for deletion? Further analysis of the context of the dozen or so occurrences of the term in the Florida Statutes established that trial de novo is sometimes provided in lieu of administrative action, and sometimes in review of it. It was decided that trial de novo in lieu of administrative action should be left untouched as not relating to judicial review of administrative action. By inverse reasoning, trial de novo in review of administrative action should be marked for deletion.

6. Two-tiered Adjudication

Early in the preparation of the reviser's bill, the staff briefly experienced concern at the thought that literal application of the mandate of chapter 74-310 would require deletion of important statutory provisions for what were thought of as "two-tiered adjudication." Examples were to be found in the roles of the Industrial Relations Commission, under chapter 443, Florida Statutes10 and the Career Service Commission, under chapter 110, Florida Statutes.11 It seemed inconceivable that the legislature had intended to obliterate such important and ongoing administrative procedures. Had it done so inadvertently? After all, such provisions relate, in a sense, to administrative adjudication. If provisions had been repealed in error, there was no authority in the reviser to correct the error.

A feeling of relief was apparent when a rationalization for preserv-

ing such procedures was discovered, and the answer lay in the view that such procedures constituted administrative review rather than adjudication. "Administrative review" was not one of the named elements of administrative procedure for which the act mandated replacement by the new APA, and the relevant statutory provisions could therefore be omitted from the reviser's bill.

7. Chapter 120 References

Very frequently encountered in the Florida Statutes are innocuous appearing cross references to chapter 120—for example, providing that a hearing or other administrative activity is to be conducted in the manner prescribed by chapter 120. For at least two reasons, the staff concluded that such references should be systematically deleted. Even assuming that the references were to the new APA, they were superfluous. The applicability of the new act did not in any manner depend upon such references, since the new APA applied by its own force to all state agencies that were not expressly exempted, and since it was clearly intended to constitute the sole statutory basis for administrative procedures.

Actually, there was no basis for assuming that the numerous cross references to chapter 120 were intended to refer to the new APA. Since they necessarily predated the enactment of chapter 74-310, their only possible effect was to incorporate by reference the provisions of the earlier APA, which had originally been enacted in 1961. But it was the inadequacies of the earlier APA that led to the 1974 revision.

In Florida, as in all other states, standard doctrine holds that such an incorporation by specific reference is of the wording of the referenced provision as it existed at the time of the incorporation. Moreover, the standard doctrine prescribes that, in the absence of an expression of legislative intent to the contrary, the wording as incorporated by reference is not affected by anything that subsequently happens to the referenced provision, even its repeal.

In other words, as of the time a reference to chapter 120 was

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12. Ch. 78-95, § 1, 1978 Fla. Laws 146 (codified at FLA. STAT. § 120.722(3) (Supp. 1978)). The legislature provides that: "Deletions of references to chapter 120 in this act do not imply that chapter 120 is not applicable; except where expressly noted otherwise, references to chapter 120 are deleted as unnecessary and repetitious." Nevertheless, ch. 78-95 not only retained a substantial number of preexisting cross references to ch. 120, but also added some. It is submitted that all such references should be deleted as redundant.


14. Overstreet v. Blum, 227 So. 2d 197 (Fla. 1969); Williams v. State, 125 So. 358 (Fla. 1930).

15. Overstreet v. Blum, 227 So. 2d 197 (Fla. 1969); Williams v. State, 125 So. 358 (Fla. 1930).
enacted, the referenced provision had two separate existences: one as a section of chapter 120 and the other as incorporated by reference in a substantive provision of the Florida Statutes. The provision could be altered, or even repealed, as a section of chapter 120 without its existence or wording as incorporated in the substantive section being affected. It was clearly arguable that the various substantive provisions of the Florida Statutes that contained such references to chapter 120 continued to be controlled by the old APA rather than the new one; a most incongruous and confusing assertion. It was quite apparent that nothing but mischief could result from failure to mark for deletion the existing cross references to chapter 120. 

There were other issues of varying difficulty. However, those already described are sufficiently representative to serve the present purpose, which is primarily to illustrate the nature of the problems encountered in preparing the reviser’s bill.

B. Review by Joint Committee Staff

Before the mammoth reviser’s bill mandated by chapter 74-310 could be drafted, it was necessary to identify the hundreds of provisions of the Florida Statutes that related to “rulemaking, agency orders, administrative adjudication, or judicial review.” Since the wording of such provisions could be expected to vary almost infinitely, the use of indices, electronic search, and the like did not seem promising. Basically, the procedure followed was simply to scan the three and a half million words of the Florida Statutes for the purpose of identifying the provisions involved. Although this arduous task was begun soon after the legislative session which created the new APA, the real work of analyzing the provisions so identified and drafting the reviser’s bill had to await completion of the regular editorial work of producing the 1974 Supplement to the Florida Statutes. The serious work started about the middle of October 1974.

The mechanical task of putting together a bill of nearly 600 pages

16. An amendment to § 57 of ch. 78-95, adding a new paragraph to § 120.72(1) of the Florida Statutes, probably cured this particular defect. The new paragraph reads:

(b) Unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 120, Florida Statutes, or to any section or sections or portion of a section of chapter 120, Florida Statutes, shall hereby include, and shall be understood as including, all subsequent amendments to chapter 120 or to the referenced section or sections or portions of a section.

Ch. 78-95, § 57, 1978 Fla. Laws 146 (codified at Fla. Stat. § 120.72(1) (b) (Supp. 1978)). However, such references should nevertheless be deleted from the statutory text as redundant.
would have been nearly insurmountable by the recently obsolete technology of typing and cutting and pasting. Fortunately, the text of the Florida Statutes had by then been entered into computer memory, and the new procedures for automated bill preparation were available, albeit with some bugs.

As the early April convening of the 1975 legislative session approached, a review-facilitating procedure was hit upon. Beginning in mid-March, successive segments of the reviser’s bill were sent to the joint committee staff in the form of computer printout.\(^7\) Each segment consisted of affected sections of completed Florida Statutes chapters. Within each segment, sections appeared in section number order.

As soon as work on the reviser’s bill was completed, the reviser’s staff set about preparing what they called the “supplemental bill.” The basis for this enterprise was the feeling that the mandate of chapter 74-310 was not entirely rational in limiting its directive to the deletion of provisions of the 1973 Florida Statutes. Simply as a matter of logistics, it should have been realized that some of the hundreds of bills to be enacted in the 1974 legislative session would be inconsistent with the new APA, but without there being any actual intention of superseding that legislation. There was no fundamental reason to treat procedural provisions enacted or substantially amended during the 1974 session any differently than the corresponding provisions of the 1973 Florida Statutes. Of course, when there was such an intent to supersede the provisions of the APA by 1974-legislation, that intent could be expressed in the legislation.

Although the reviser was obviously bound by the clear terms of the mandate expressed in chapter 74-310, he voluntarily prepared the separate supplemental bill so that the legislature could, if it wished, address its attention to provisions that had been added or substantially amended in 1974.\(^11\)

By May 7, 1975—well into the second half of the legislative session—the staff of the Joint Administrative Procedures Committee

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17. Normally reviser’s bills are submitted to the house and senate rules committees for review and introduction. However, in this instance it seemed appropriate for the reviser’s bill to be reviewed by the staff of the Joint Administrative Procedure Committee. The joint committee was established by the act which created the new APA. One of the duties expressly given to the new joint committee was to “[r]eport to the legislature at least annually, no later than the first week of the regular session, and recommend needed legislation or other appropriate action.” Ch. 74-310, § 2, 1974 Fla. Laws 952 (current version at Fla. Stat. § 11.60(a) (e) (1977)). The revisers secured the permission of both rules committees to submit this particular reviser’s bill directly to the joint committee for review.

18. Since the supplemental bill was never dealt with any differently than the main reviser’s bill, no consistent attempt will be made in the following discussion to distinguish between them.
had reviewed only approximately one-third of the proposed reviser's bill, but expressed substantial disagreement with its contents.\(^{19}\) The committee's staff director provided the reviser with a xerox copy of the proposed reviser's bill annotated with handwritten comments of the committee staff members who had reviewed it. Examination of the handwritten comments quickly revealed the basis for the difference of opinion. In perhaps ninety percent of the instances in which the committee staff had rejected a proposed deletion in the reviser's bill, the handwritten comment indicated concern that there was no corresponding or equivalent provision in the new APA.

By letter to the director of the Joint Administrative Procedures Committee, the reviser firmly stated the various arguments supporting the basis upon which the reviser's bill had been prepared.\(^{20}\) He pointed out that there was no warrant in the language of the new APA for the position that the committee staff had taken. To the contrary, the mandate of chapter 74-310, by which the new APA had been enacted, stated very clearly "that the provisions of this act shall replace all other provision in the Florida Statutes, 1973, relating to" the various elements of administrative procedure. In no way was it even suggested that only those provisions for which a corresponding provision was to be found in the new APA were to be considered as having been replaced.

The reviser also urged that the position of the joint committee's staff was obviously incompatible with the stated legislative intent to provide for statewide uniformity of rulemaking and adjudicative procedures. It would certainly not help the cause of uniformity to preserve statutory procedural aberrations merely because there were no corresponding provisions in the new APA. Finally, the reviser pointed out that although earlier versions of Senate Bill 892 contained language that was consistent with the position that the committee staff had taken, the language had been removed from the bill prior to final enactment.\(^{21}\)

The same arguments were repeated at an early morning staff meeting held in the office of Senator Philip D. Lewis, Chairman of

19. Letter from Carroll Webb, Executive Director of the Joint Administrative Procedure Committee, to Ernest Means, Director of Division of Statutory Revision (May 7, 1975).
20. Letter from Ernest Means, Director of Division of Statutory Revision, to Carroll Webb, Executive Director of the Joint Administrative Procedure Committee (May 19, 1975).
21. For example, the so-called repealer section had previously read: "[t]o conform other statutes to this act, the following laws are repealed or amended;" FLA. S. JOUR. 557 (Reg. Sess. 1974). Similarly, in the final draft of the reporter for the Florida Law Revision Commission, from which the new APA was finally adapted, the section dealing with contested proceedings would have applied "whenever constitutional right or a statute other than this act requires a hearing." FLORIDA LAW REVISION COUNCIL, 7 PRELIMINARY MATERIALS DEALING WITH THE FLORIDA ADMINISTRATIVE PROCEDURE ACT 16 (1974) (emphasis added).
the Joint Administrative Procedure Committee. The meeting was also attended by Senator Harry Johnston, who had been designated to sponsor the reviser’s bill if introduced, and several staff persons, including the director of the joint committee and the reviser. Both senators acquiesced in the position, urged by the reviser, that all provisions relating to the various named elements of administrative procedure should be marked for deletion, whether or not there was a corresponding provision in the new APA. The two senators decided to go ahead and introduce the reviser’s bill as proposed, and it was indeed introduced in the Senate on April 24 as Senate Bill 604 and referred to the Committee on Rules and Calendar.22

At the early morning meeting, the reviser attempted to dissuade the two senators from introducing the reviser’s bill without further staff review. The joint committee staff had not reviewed the bill in its entirety, and the review that it had accomplished had proceeded on a faulty theory. However, the senators persisted. There is no indication that Senate Bill 604 was ever seriously dealt with following its introduction. On May 20 the Committee on Rules and Calendar requested a fifteen day extension for consideration of the bill. However, the bill died in that committee with the end of the session.23

C. The Reviser’s Bill in the 1976 Session

At the demand of the legislative leadership, expressed through the executive director of the Joint Legislative Management Committee, the reviser’s bills were updated with the product of the 1975 session. No attempt was made to review the original judgments that had gone into the preparation of the reviser’s bill. Rather, the update objective was merely to conform the language of the bill to legislative changes made in the 1975 session. If a section had been repealed, it was removed from the bill; if the language marked for deletion had been altered by amendment, the wording of the bill was changed accordingly.24 The updated reviser’s bills were prepared for introduction in both houses of the legislature. They were prefilled in the house on February 13, 1976, and referred to the Committee on Governmental Operations. They were formally introduced

24. However, if a new statute containing procedural language relating to rulemaking, agency orders, administrative adjudication, or judicial review had been enacted during the 1975 session, no attempt would have been made to incorporate that section into the reviser’s bill, for that would have been a later expression of the legislative will, superseding the will of the 1974 legislature as expressed in ch. 74-310.
and referred on April 4, but died in that committee at the end of the session.\(^{25}\)

**D. The Reviser's Bills in the 1977 Session**

At the very end of the 1976 session, the presiding officers of the two houses jointly addressed a letter of instruction to the Joint Administrative Procedure Committee, directing it to review the reviser's bill for consideration by the next legislature. The stated purpose of the review was “to determine whether and to what extent [the bills] alter substantive rather than procedural provisions of law.”\(^{26}\) The committee was to submit its report and recommendations to the presiding officers “no later than forty-five days prior to the next regular legislative session.”\(^{27}\)

In order to facilitate this review of the bills by the joint committee staff, the reviser again updated the language of the bills, this time with the product of the 1976 session. In addition, in view of the long lapse of time since the original mandate of chapter 74-310, and with the concurrence of the director of the joint committee staff, the reviser's bill and the supplemental bill were combined.\(^{28}\)

The staff of the Joint Administrative Procedures Committee submitted its report to the chairman of that committee by letter dated April 18, 1977, well into the 1977 legislative session. After quoting the mandate of chapter 74-310 which guided the preparation of the reviser's bill, and observing that the reviser's bill had been prepared according to a literal interpretation of that mandate, the report indicated that it was the position of the committee staff that only those procedural provisions that "would cause a conflict with the provisions of Chapter 120" should be replaced.\(^{29}\) Attached to the

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25. **Legislative Information Division of the Joint Legislative Management Committee, Florida History of Legislation 396 (Reg. Sess. 1976).**

26. Letter from Senator Barron, President of the Senate, and Representative Tucker, Speaker of the House, to Representative Hector, Chairman of the Joint Administrative Procedure Committee (June 2, 1976).

27. Id.

28. Id.

29. The updated version of the reviser's bill was not submitted to the Joint Administrative Procedure Committee staff until the end of October 1976, since its preparation could not begin until the text of the Florida Statutes had been editorially updated with the product of the 1976 session.

29. Report from Carroll Webb, Executive Director of the Joint Administrative Procedure Committee, to Senator Lewis, Chairman of the Joint Administrative Procedure Committee (Apr. 18, 1977). Specifically the report indicated:

  When your staff reviewed this bill, we followed a different premise. We concluded that the Legislature intended that all provisions contained in the Florida Statutes that related to rule-making, agency orders, administrative adjudications, or judicial review are to be replaced if their retention would cause a conflict with the provisions of Chapter 120. Further, these sections of the Florida Statutes that relate to the
report was a list of approximately 400 sections the staff believed could "safely be removed from the Florida Statutes."30

The reviser reacted quickly and forcefully. By letter, dated the following day, to the chairman of the joint committee, he asserted that the staff report was "based on faulty premises and a gross misreading of Chapter 74-310."31 He pointed out that the repeals by chapter 74-310 had taken effect on January 1, 1975, the effective date of the act, and that it was not within the present power of the legislature to restore repealed provisions by simply deleting them from the reviser's bill.32 He further pointed out that the joint committee staff's construction of the mandate, according to which provisions relating to the various elements of administrative procedure would be replaced by the APA only if they conflicted with it, was "not only unwarranted by the language of the act, but completely nullifies the statement of legislative intent contained therein."33

Left unmentioned was another obvious fact—that the report of the joint committee staff was not at all responsive to the instructions of the presiding officers. According to their letter of June 2 to the chairman of the joint committee, the purpose of the review was to ascertain the extent to which the reviser's bills "alter substantive rather than procedural provisions of law."34 The resulting report ignored these guidelines in concluding that the APA should be construed as replacing only those provisions that were in conflict with chapter 120.

The decision of the joint committee was to follow the recommen-
dation of its own staff. Upon being so informed, the Statutory Revision Division prepared copies of a bill conforming to the staff report for introduction. No formal action was taken on the reviser's bill during the remainder of the 1977 legislative session. Apparently, the leadership decided to rely instead on an interim analysis by the Administrative Procedures Subcommittee of the House Committee on Governmental Operations, for that is the course of action that finally materialized.

III. Action by the 1978 Legislature

During the interim between the 1977 and 1978 legislative sessions, the Administrative Procedures Subcommittee of the House Committee on Governmental Operations reviewed the version of the reviser's bill that had been prepared for review by the Joint Administrative Procedures Committee staff prior to the 1977 session. The product of the committee's labor was introduced as House Bill 1075 during the 1978 legislative session and, with minor amendments not relevant here, was enacted into law as chapter 78-95.

Most relevant to the present discussion was the act's amendment of section 120.72(1), Florida Statutes which contained the language upon which the reviser's bill had been based.

The intent of the Legislature in enacting this complete revision of chapter 120, Florida Statutes, is to make uniform the rule-making and adjudicative procedures used by the administrative agencies of this state. To that end, it is the express intent of the Legislature that chapter 120 shall supersede all other provisions in the Florida Statutes, 1977, relating to rule-making, agency orders, administrative adjudication, licensing procedure, or judicial review or enforcement of administrative action for agencies as defined herein to the extent such provisions conflict with chapter 120, unless expressly provided otherwise by law subsequent to January 1, 1975. The provisions of this act shall replace all other provisions in the Florida Statutes, 1973, relating to rule-making, agency-

35. This was probably an overstatement. As will be seen from the present discussion, the joint committee staff's position represented only a partial retreat from the principle of uniformity as mandated by ch. 74-310. Its consequences were more in the direction of creating confusion than in actually retreating from the requirement of uniformity. See note 158 infra and accompanying text.

36. Actually, when the 1978 legislature enacted legislation conforming to this recommendation of the joint committee staff, it was found necessary to amend the APA's statement of legislative intent to provide that provisions of existing law would be "superseded" by the new APA only to the extent that they were in "conflict" with it. Ch. 78-95, § 57, 1978 Fla. Laws 146 (codified at Fla. Stat. § 120.72(1) (Supp. 1978)).

37. Ch. 78-95, 1978 Fla. Laws 146.

The changes wrought through the amendment of section 120.72(1) by chapter 78-95 had varying degrees of potential relevance for the present discussion. Briefly, the changes and their relevance include:

(1) The word "supersede" was substituted for the word "replace" as the operative verb. Although the word "supersede" imports a different qualitative connotation than the word "replace," the difference is hardly sufficient to warrant discussion. Both words necessarily carry the meaning that the prior law is repealed and chapter 120 is installed in its place.

(2) The most basic and important change—at least, from the standpoint of the present discussion—consisted of the insertion into the repeal formula of an added, limiting condition to the repeal of existing statutory provisions as having been superseded by chapter 120. Under the amended formula of section 120.72(1), in order to qualify as a provision that is superseded (formerly "replaced"), the existing statutory provision must not only "relate to" one of the named elements of administrative procedure; it must also "conflict with" chapter 120.

(3) "Licensing procedure" and "enforcement of administrative action" were added as elements of administrative procedure relative to which provisions of existing laws are, in the event of conflict with chapter 120, superseded by chapter 120. However, it is doubtful that the addition of either concept to the repeal formula will make much, if any, difference. As to "licensing procedure," existing statutory provisions were already marked for deletion in the original reviser's bill as relating to the category of "agency orders" or "administrative adjudication."

As to the element of "enforcement of administrative action," it would seem that the requisite conflict with chapter 120 would be precluded by the introductory phrase of section 120.69, the APA section dealing with enforcement of agency action. It reads: "[E]xcept as otherwise provided by statute." One must wonder, then, at the logic of adding this particular element.

In any event, it would seem that the addition of the concept of "conflict with chapter 120" to the statement of legislative intent rendered the requirement that the repealed provisions, "relate to"

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39. Ch. 78-95, § 57, 1978 Fla. Laws 146 (codified at FLA. STAT. § 120.72(1)(a) (Supp. 1978)). Language added to this section is printed in underscored type, and language deleted is printed in struck-through type.
the various elements of administrative procedure quite meaningless. One may ask, how could an existing statutory provision conflict with chapter 120 without relating to rulemaking, agency orders, administrative adjudication, or judicial review? In fact, if, by some twist of logic, a provision could do so, it would stand repealed by implication anyway, by the standard canons of statutory construction.

(4) The existing laws that were to be subject to being superseded by chapter 120 in the event of conflict with that chapter were identified as provisions of the 1977 instead of 1973 Florida Statutes. This change probably does no more than recognize the operation of the principle that one legislature cannot bind a subsequent legislature. Whereas the 1974 legislature could not extend the repeal principle to the product of the 1975 and subsequent legislative sessions, 40 this legislature could extend the principle to the product of all sessions through that of 1977.

(5) A further condition was added to the superseding of existing law by chapter 120. In the event of conflict with that chapter, such law would be superseded "unless expressly provided otherwise by law subsequent to January 1, 1975." It is tempting to infer that the use of the January 1, 1975 date in this context revealed an intent that the changed formula enacted by chapter 78-95 be applied retroactively to the effective date of chapter 74-310. However, a more practical rationale is that the committee simply did not wish to jeopardize the various specific exemptions from chapter 120 that have been enacted during the 1975 and subsequent sessions.

Although the amendment of the legislative intent statement of section 120.72(1), Florida Statutes, 41 is especially important to the present discussion, it was by no means the sole purpose of chapter 78-95. As indicated by section 1 of that act, "[t]he primary purpose of this act is to repeal or amend various provisions of the Florida Statutes containing procedural language superseded by or made redundant by chapter 120." 42 The amended section 120.72(1) established just which existing provisions of the Florida Statutes had been so superseded—i.e., those which "related to" one of the named elements of administrative procedure and were also in conflict with chapter 120. The pamphlet law version of the act was 242 pages long and amended or otherwise dealt with approximately 500 sections of the Florida Statutes. It was truly a massive legislative effort.

40. It could, of course, have included the product of the 1974 session, but preferred not to.
42. Ch. 78-95, § 1, 1978 Fla. Laws 146 (codified at Fla. Stat. § 120.722(1) (Supp. 1978)).
IV. Chapter 78-95: Reasonable?

By inserting the limiting concept of "conflict with chapter 120" into the statement of legislative intent contained in section 120.72(1), Florida Statutes, the house subcommittee apparently sought to reduce the extent of implied repeal resulting from the new APA, and to retreat from the ideal of statewide uniformity. In order to determine whether the 1978 legislature acted reasonably it will be necessary to discuss a number of peripheral questions: Did repeal occur as a result of the 1974 act? How did it occur? What was its extent? When did it take effect? Had the repealed provisions been revived in any way prior to the 1978 session? Did chapter 78-95 itself operate to revive the previously repealed provisions that it otherwise failed to deal with?

A. Did Repeal Occur?

1. The Rationale of Repeal

The enactment, amendment, or repeal of statutory law is a function of sovereign power that is entrusted solely to the legislature. By the nature of the legislative process, legislative enactment of new laws is necessarily accomplished expressly. However, the amendment or repeal of existing statutory law may be either expressed or implied, and is as efficacious the one way as the other.

Although the distinction between amendment and repeal is an arbitrary one, the apparent ambiguity is not important here. The question here is simply whether various provisions of the 1973 Florida Statutes relating to the designated elements of administrative procedure were legally terminated, whether by repeal or amendment, as having been replaced by the new APA. For convenience, we shall refer to such termination as repeal.

The distinction between expressed and implied repeal is a relative one since it is fundamentally a matter of the degree of objectivity with which the repealed provision can be identified. It is possible to think of the difference between them as a continuum. The end of least objectivity would be represented by irreconcilable conflict, the least objective touchstone for identifying a provision that is repealed by implication. The end of maximum objectivity would be represented by a Florida Statutes section number or, in appropriate circumstances, a session law chapter number, the usual touchstone

44. FLA. CONST. art. III, § 1.
45. 73 Am. Jr. 2d Statutes § 392 (1974); 82 C.J.S. Statutes § 286 (1953).
for identifying a provision that has been expressly repealed.

On such a continuum, the repeal resulting from the statement of legislative intent contained in chapter 74-310 would surely occupy a position near the end representing maximum objectivity, close to that occupied by expressed repeal.\(^4\) Certainly, the fact that an existing statutory provision "related to" one of the named elements of administrative procedure can be determined with a great deal more objectivity than the fact that such a provision is in "conflict with" some provision of chapter 120.

In a recent case involving statutory language similar to that of chapter 74-310, the Florida Supreme Court came very close to labeling the resulting repeal an express one.\(^4\) The prior law was chapter 67-1815, a special act relating to Volusia County authorizing Orange City to regulate water rates within its limits.\(^4\) The subsequent act was chapter 71-278, which was a complete rewrite of the state's Water and Sewer System Regulatory Law, in rather the same sense as chapter 74-310 was a complete rewrite of the law relating to administrative procedure.\(^5\) Moreover, this general revision of the Water and Sewer System Regulatory Law directed the repeal of existing statutory provisions in language strikingly similar to that employed by chapter 74-310. Chapter 71-278 provided that "this chapter shall supersede all other laws on the same subject."\(^5\) The court apparently experienced no difficulty in concluding that repeal had occurred: "This Chapter 67-1815 relied on by appellee, along with all other laws on the subject, were [sic] expressly superseded by a new, complete rewrite of the Water and Sewer System Regulatory Law in 1971."\(^5\) The court's statement that all laws on the subject were "expressly superseded" was tantamount to saying that they were "expressly repealed." Nevertheless, for present purposes, the discussion here shall proceed on the basis of the principles of implied repeal resulting from the statement of legislative intent contained in section 3 of chapter 74-310.

\(^4\) Ch. 74-310, § 3, 1974 Fla. Laws 952 (current version at FLA. STAT. § 120.72(1)(a) (Supp. 1978)).

\(^4\) Orange City Water Co. v. Town of Orange City, 255 So. 2d 257 (Fla. 1971).

\(^4\) Ch. 67-1815, 1967 Fla. Laws 3098 (uncodified special law).

\(^5\) Ch. 71-278, 1971 Fla. Laws 1415 (current version at FLA. STAT. § 367.011(4) (1977)).

\(^5\) Id.

\(^5\) Id.

\(^5\) Orange City Water Co. v. Town of Orange City, 255 So. 2d 257, 259 (Fla. 1971). \textit{But see} Alford v. Duval Cty. School Bd., 324 So. 2d 174 (Fla. 1st Dist. Ct. App. 1975), holding that there had been no repeal of a special act under the similar wording of ch. 74-310. There, the repeal had been of "all other provisions in the Florida Statutes, 1973," relating to the various named elements of administrative procedure. \textit{Id.} at 177 (quoting FLA. STAT. § 120.72(1) (1975)). By specifying the repeal of sections of the Florida Statutes the language of the 1974 act had ruled out the repeal of special acts, which are not codified.
The proposition that the enactment of the new APA resulted in a massive implied repeal of existing statutory provisions relating to administrative procedure is supported by two separate notions of how legislative intent may be expressed. The most frequently encountered doctrine of repeal by implication is that which holds that a later enactment repeals an earlier one to the extent that they are in irreconcilable conflict. Since this doctrine is not relied upon in the following discussion, there is no need to elaborate on it. Suffice it to say that, as with all notions of implied amendment or repeal, it "rests on the ground that the last expression of the legislative will ought to control."  

The second rationale for a finding that an implied repeal has occurred is more relevant here. When the subsequent legislative enactment constitutes a comprehensive revision of an entire subject matter, there is a basis for an inference that the legislature intended that all existing provisions relating to that subject matter shall stand repealed, whether or not there is conflict.  

It is not surprising that the rationale based on a subsequent enactment of a comprehensive revision of the statutory law relating to an entire subject matter is less frequently encountered than the rationale based on the existence of irreconcilable conflict between the existing and the subsequently enacted legislative provisions. After all, the legislature does not enact comprehensive revisions of whole bodies of state law that frequently. Nevertheless, the doctrine is quite familiar to Florida case law.  

In a recent Florida Supreme Court case, the doctrine under discussion resulted in the implied repeal of a special act by a subsequently enacted general act, a circumstance that well illustrates the potency of the rule. There the prior statute was chapter 70-1004, a special act authorizing collective bargaining for fireman of any municipality in Palm Beach County. The subsequently enacted statute was chapter 72-275, providing the same authorization on a comprehensive statewide basis. The court indicated that in most

55. Id. §§ 401, 411; 82 C.J.S. Statutes §§ 290, 292 (1953); C. Sands, supra note 46 at § 23.13.  
56. Oldham v. Rooks, 361 So. 2d 140 (Fla. 1978); Town of Palm Beach v. Local 1866, IAFF, 275 So. 2d 247 (Fla. 1973); Anglin v. Mayo, 88 So. 2d 918 (Fla. 1956); State v. Newell, 85 So. 2d 124 (Fla. 1956); Brevard Cty. v. Board of Pub. Inst., 33 So. 2d 54 (Fla. 1947); Realty Bond & Share Co. v. Englar, 143 So. 152 (Fla. 1932); Jernigan v. Holden, 16 So. 413 (Fla. 1894); Zedalis v. Foster, 343 So. 2d 849 (Fla. 2d Dist. Ct. App. 1976).  
57. Town of Palm Beach v. Local 1866, IAFF, 275 So. 2d 247 (Fla. 1973).  
cases the special act would retain its effectiveness notwithstanding a subsequent general act on the same subject. "However, where the general act is an overall revision or general restatement of the law on the same subject, the special act will be presumed to have been superseded and repealed."60

In another case, the Second District Court of Appeal announced a substantially similar doctrine.61 In vacating a county road, the county commissioners had failed to give the notice required by a special act, though the notice given did comply with the requirement of a more recently enacted general law that was part of a revision of the state's law relating to all public roads. The court quoted the operative language of the Florida Supreme Court that an overall revision or general restatement of the law will be presumed to have superseded existing law on the same subject, even a special act.62 The court concluded in its own words that "[t]he legislature's complete revision of a subject is an implied repeal of earlier acts dealing with the same subject unless the contrary intent is clearly shown."63

There can be no doubt that chapter 74-310 completely fulfills the requirements for implied repeal pursuant to this doctrine of repeal by comprehensive revision. It certainly constituted a complete and comprehensive revision of the state's statutory law relating to administrative procedures, containing detailed procedures for rule-making, administrative adjudication, licensing, and judicial review of administrative action. In addition, it provided a thoroughgoing procedure for the publication of agency rules and established a pool of professional hearing officers for the conduct of agency hearings. It also contained far-reaching provisions for legislative oversight of administrative proceedings, predominantly through the review of agency rules by a joint legislative committee.

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60. Town of Palm Beach v. Local 1866, IAFF, 275 So. 2d 247, 249 (Fla. 1973) (citations omitted).
62. Id. at 850.
63. Id. The circumstances of this case illustrate that the rationale based on subsequent revision of the entire subject matter constitutes a stronger basis for implied repeal than does the rationale based on irreconcilable conflict between the two provisions. Here, both conditions were present. As the court indicated, the existence of conflict would probably have been sufficient to signal the implied repeal of an existing general law showing the requisite degree of conflict with the later enactment. However, it was not sufficient to bring about the implied repeal of a special or local law. Pursuant to the court's obligation to give effect to both laws if possible, the local law could have been continued in effect as an exception to the subsequently enacted general law. Wade v. Janney, 7 So. 2d 797 (Fla. 1942); State v. Johnson, 72 So. 477 (Fla. 1916). However, as indicated, even a special or local act cannot survive the subsequent enactment of a comprehensive revision (assuming, of course, an appropriate judicial challenge), absent some indication of a contrary legislative intent.
In the absence of any indication whatever that chapter 74-310 was not intended to constitute the sole statutory basis for the administrative procedures to be followed by state agencies, there was a strong case for concluding that passage of the new act resulted in the implied repeal of all existing statutory provisions having to do with administrative procedures. Not only was there no saving clause or other language that would tend to negate the operation of such an implied repeal; there actually existed extraordinarily clear language indicating that the repeal of such existing statutory requirements was affirmatively intended. First, it was stated to be the legislative intent that there be uniformity in the rulemaking and adjudicative procedures used by the administrative agencies of the state. Taken with the comprehensiveness of the accompanying revision, this statement of legislative intent is most compelling. However, the statement of legislative intent continued with even stronger language of repeal. It reads that “it is the express intent of the legislature that the provisions of this act shall replace all other provisions in the Florida Statutes, 1973 relating to rulemaking, agency orders, administrative adjudication or judicial review.” Short of expressly repealing the various existing provisions by specific references to Florida Statutes section numbers and other structural designations, this was as forthright a statement of legislative repeal as can be conceived.

2. Judicial Acquiescence in Repeal by 74-310

The five years that have transpired since the enactment of chapter 74-310 and the new APA have not provided a sufficient period of time for a large number of cases involving its provisions to reach the appellate courts of the state. Even so, with a narrow exception shortly to be discussed and distinguished, there has been consistent judicial support for the position that the enactment of chapter 74-
310 resulted in a massive repeal of existing statutory provisions relating to the procedures to be followed by the administrative agencies of the state.

In the recent case of *State v. Willis*, the First District Court of Appeal, in an opinion by Judge Smith, analyzed the implications of a 1975 act which purported to save from repeal by chapter 120 any provision granting a "right to a proceeding in the circuit court in lieu of an administrative hearing." The court found the statement of legislative intent contained in chapter 74-310 to be quite unambiguous, observing that "[b]y Section 120.72(1), the 1974 Act gave notice that the judicial remedies it provided were to be regarded as comprehensive and exclusive." It then emphatically negated any notion that the 1975 act had revived the numerous provisions relating to judicial review that had been repealed and replaced by chapter 120. It is the vigor with which the notion is rejected that makes it especially notable here: "[N]either may it be supposed that, by enacting Chapter 75-191, the legislature preserved from repeal the baffling array of disparate statutes which, before the 1974 Act, provided for review of action by certain agencies, but not others, by various means in various courts."

In *Todd v. Carroll*, the Fourth District Court of Appeal was reviewing the action of a county school board in terminating the employment of a teacher. The teacher attacked the board's action on the ground that he had not received the notice required by section 231.36(4), Florida Statutes. The court, speaking through Judge Alderman, responded that the new APA superseded the notification requirements of section 231.36(4). The court then quoted from section 120.72(1), Florida Statutes, the intent section of the new APA, and concluded: "The obvious intent of the legislature was to enact the new Administrative Procedures Act in place of the prior law relating to administrative adjudication."

Other opinions contain similar statements, though as dictum. In *Florida Interconnect Telephone Co. v. Florida Public Service Commission*, the court had under consideration the so-called "File
and Suspend Law,” enacted by chapter 74-195.75 The court recognized that section 3 of chapter 74-310 exempted this particular statute from the operation of the repeal provision of chapter 74-310.76 It observed simply that the file-and-suspend procedure “survives the adoption of the new Administrative Procedure Act,” and cited section 120.72(3).77 Although this is not a particularly dramatic statement of support, it does clearly recognize that the repeal by chapter 74-310 would have occurred, but for the saving provision.

In Chung-ling Yu v. Criser,78 the First District Court of Appeal held that the proceedings there involved, having to do with termination of the employment of a nontenured teacher, were instituted at a time that made them subject to the old APA. It observed that in the 1974 enactment of the new APA, “the legislature clearly expressed an intent in revising the APA to make uniform the adjudicative procedures used by state administrative agencies by replacing other procedural schemes found in the Florida Statutes with the provisions of the APA.”79

Parallel to the substantial judicial acquiescence that has been expressed in recognition of the massive repeal by chapter 74-310 has been a number of opinions of the attorney general. Since the 1974 enactment of the new APA, the opinions of the attorney general have uniformly taken the position that the 1974 act thereafter constituted the sole statutory basis for the various named elements of administrative procedure. An example appeared in an opinion to the Secretary of Environmental Regulation, in which the attorney general asserted: “Based on the . . . intent clearly expressed by the Legislature and the recent case law . . . , it is my opinion that all rule-making procedures provided in Chapter 403, F.S., as amended, have been replaced and superseded by Ch. 120, F.S. (1974 Supp.).”80

Judicial acquiescence in the repeals by chapter 74-310 falls short of unanimity; however, the exception is a narrow one and subject to telling criticism. In the 1976 case of Department of Revenue v. University Square, Inc.81 the First District Court of Appeal considered whether the circuit court had subject matter jurisdiction of an action for a declaratory judgement to contest the legality of an

75. Ch. 74-195, § 3, 1974 Fla. Laws 534 (current version at Fla. Stat. § 364.06(4) (1977)).
76. Ch. 74-310, § 3(3), 1974 Fla. Laws 952 (current version at Fla. Stat. § 120.72(3) (Supp. 1978)).
77. 342 So. 2d at 814.
78. 330 So. 2d 198 ( Fla. 1st Dist. Ct. App. 1976), cert. denied, 342 So. 2d 1100 (Fla. 1977).
79. Id. at 201.
assessment of the documentary tax by the Department of Revenue. In upholding the jurisdiction of the circuit court, the district court of appeal relied in part on the provision of the schedule to article V of the state constitution that “until changed by general law . . . circuit courts shall have . . . exclusive original jurisdiction . . . in all cases involving legality of any tax assessment or toll.”\textsuperscript{82} The court also cited to section 26.012, Florida Statutes,\textsuperscript{83} which vests the same jurisdiction by substantially identical wording. The department argued that these jurisdictional provisions had been repealed by chapter 74-310. The court responded: “It is our opinion that there are no provisions in Chapter 120, Florida Statutes, which directly or by implication divest the circuit courts of their historical jurisdiction to determine the issues in contested documentary tax assessment actions.”\textsuperscript{84} The court went on to explain: “We are confident that had the legislature intended to do this, it would have said so in specific language, and would have expressly repealed the inconsistent laws.”\textsuperscript{85}

This reliance on the constitutional and statutory jurisdiction of the circuit courts in matters relating to the legality of tax assessments or tolls is certainly open to critical comment. For one thing, there is no basis whatever for according to either provision such immunity from repeal by subsequent general law—in this instance, chapter 74-310. The provision of the schedule to article V of the Florida Constitution is expressly made applicable “until changed by general law.” Similarly, as a statute, section 26.012 is just as subject to repeal or alteration by subsequent law, whether expressed or implied, as any other statute. To the extent that either of these provisions purported to provide a procedure by which the circuit courts could review administrative action, it is strongly arguable that they were repealed or otherwise altered, as having been replaced by chapter 74-310.

Just as certainly misapplied is the court’s confident assurance that had the legislature intended to alter this jurisdiction of the circuit courts to determine the legality of any tax assessment or toll, it would have done so expressly. There is no discernible reason why the 1974 repealer should have operated any differently as to provisions relating to the jurisdiction of circuit courts to determine the legality of tax assessments or tolls than as to provisions relating to any other subject matter. Actually, it was logistically impossible for

\textsuperscript{82} FLA. CONST. art. V., § 20.
\textsuperscript{83} (1977).
\textsuperscript{84} 336 So. 2d at 372.
\textsuperscript{85} Id.
the legislature to have identified all of the 650 or so sections of the Florida Statutes that contained provisions repealed as having been replaced by the new APA and to have prepared the necessary legislation prior to the enactment of chapter 74-310. In leaving the actual deletion of repealed provisions to be accomplished by the reviser's bill the following session, the legislature was proceeding in the only reasonable way available to it, and its procedure was just as valid as to these provisions as to any other. 68

In a subsequent case, 67 the Second District Court of Appeal followed the precedent of the University Square decision and explained why it preferred review by the circuit court to review by the district court of appeal pursuant to the new APA: "Section 26.012 requires that the circuit court sit as a court of original jurisdiction providing an opportunity for full judicial proceedings while 120.68(4) limits the district court of appeal to appellate jurisdiction where the scope of review is confined to the record transmitted to it by the agency." The court concluded: "We do not believe that the restricted review authorized by the APA pre-emptsthe complete hearing prescribed in 26.012." 68 The quoted statement constitutes a rational explanation of the court's preference for the more thoroughgoing review that would be had in the circuit court. However, it was not its own preference that the court was supposed to be consulting, but that of the legislature, as expressed in chapter 74-310. Neither was it the intent of the legislature in enacting the new APA to provide for review of administrative action that was coextensive with that of the statutory provisions being replaced. Its stated purpose was to provide for statewide uniformity by establishing the new APA as the sole statutory basis for designated elements of administrative procedure for all state agencies. That purpose was frustrated by the line of holdings under discussion, but only to a relatively small degree.

Within the brief period since the decision of the First District Court of Appeal in University Square, its reasoning in that case has been uncritically accepted by the Fourth District Court of Appeal and the Florida Supreme Court. 69 Neither court attempted to elabo-

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66. This conclusion is not invalidated by the circumstance that neither of these jurisdictional provisions was included in the original reviser's bill prepared by the Division of Statutory Revision and Indexing. Section 26.012 was apparently omitted through oversight. The constitutional provision was properly omitted, since the mandate under which the reviser's bill was prepared was expressly limited to provisions of the 1973 Florida Statutes. Ch. 74-310, § 3, 1974 Fla. Laws 952 (current version at FLA. STAT. § 120.72(1) (a) (Supp. 1978)).
68. Id. at 406.
69. Department of Revenue v. AMREP Corp., 358 So. 2d 1343 (Fla. 1978); Oak Hill West,
rate the doctrine any further.

One further principle of limitation on the repeal of procedural provisions by chapter 74-310 remains to be discussed briefly. The discussion should be in principle, since its sole formal expression has been limited to a concurring opinion by a supreme court justice.\(^90\)

In this per curiam opinion, a majority of the Florida Supreme Court had disposed of a petition for certiorari on the basis of the Workmen's Compensation Law, remarking that this law rendered it unnecessary for the court to treat the petitioner's claims under the APA. Justice Adkins, with Justice Hatchett concurring, agreed with the outcome, but protested the majority's "cavalier disregard" of the petitioner's APA claims, pointing out that the result would have been even more favorable to the petitioner under the APA than it was under the Workmen's Compensation Law. The majority should have informed petitioner why the APA did not apply to his claim.

Justice Adkins discerned an intent of the legislature to exclude workmen's compensation from the new APA because during the same session that brought enactment of the APA, the 1974 legislature enacted an amendment to the Workmen's Compensation Law that required that "[t]he practice and procedure before the [industrial relations] commission and the judges of industrial claims shall be governed by rules adopted by the Supreme Court.\(^91\) Moreover, he reasoned this intent was confirmed by the fact that the provision requiring the supreme court to adopt workmen's compensation rules was reenacted the following session.\(^92\)

Justice Adkins' argument in support of his conclusion is not at all compelling. To begin with, there is little in the 1974 provision requiring the supreme court to adopt workmen's compensation rules that could legitimately be taken as evidence of intent concerning the applicability of the new APA. It is even doubtful that many legislators were aware of that provision at the time the APA was enacted. It consisted of a brief, single-sentence section, buried in a comprehensive act consisting of twenty-six sections, some of them quite lengthy. Moreover, the order of enactment militated against any such inference of intent. Whatever slight implication of intent would have resulted, had the provision concerning workmen's compensation rules been enacted subsequent to passage of the new APA,

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91. Ch. 74-197, § 16, 1974 Fla. Laws 542 (current version at Fla. Stat. § 440.29(3) (Supp. 1978)).
92. Ch. 75-209, § 14, 1975 Fla. Laws 456 (current version at Fla. Stat. § 440.29(3) (Supp. 1978)).
certainly disappears when it is considered that the APA was subsequently passed. In short, out of the thousands of bills introduced during the session, these two were simply referred to different committees and followed different legislative paths on their way to passage. There is little basis for inferring legislative intent from such circumstances.

It is equally inappropriate to infer such legislative intent from the so-called reenactment, during the 1975 session, of the same provision. Actually, all that happened was that section 440.29, which included the provision requiring the supreme court to adopt workmen's compensation rules, was simply republished in the course of being amended, as required by article III, section 6, of the Florida Constitution. Obviously, there is no basis for inferring legislative intent from this constitutionally mandated republication of the provision involved.

It is curious that Justice Adkins did not rely to a much greater degree on the earlier holding of the court in the 1974 case of Scholastic Systems, Inc. v. LeLoup. The opinion in that case did not actually mention the just-enacted APA, which had not yet gone into effect. However, the court did lay down principles that apparently foreclosed any possibility that the new act could be made applicable to workmen's compensation proceedings.

The principal thrust of the holding in the Scholastic Systems case was to reduce the extensive, appellate-type review that the court had customarily accorded decisions of the Industrial Relations Commission to the relatively more cursory level of review that is governed by the traditional standard of "‘departure from the essential requirements of law.'" However, the rationale by which the court reached this result required it first to establish that the commission, in its review of decisions of Judges of Industrial Claims, functioned as a judicial body. Review by the commission actually satisfied the constitutional requirement that no person shall be bound until he has had his day in court. Still more specifically, on its way to the desired conclusion, the court expressly held that hearings by Judges of Industrial Claims were quasi-judicial in nature, that the commission's review of decisions by Judges of Industrial Claims was judicial in nature, and that neither constituted "administrative action" in the sense that would make them subject to review by the district courts of appeal.

93. 307 So. 2d 166 (Fla. 1974).
94. Id. at 168.
95. FLA. CONST. art. I., § 9.
96. In the court's words:
   The "administrative action" mentioned in the Fla. Const. Art. V, § 4 (b) (1) and
If decisions of the Industrial Relations Commission are not "administrative action" for purpose of review by the district courts of appeal under the authority of article V, section 4(b) (2), of the Florida Constitution,7 then they are not such for purposes of the APA either, for that provision is the obvious basis for the APA provisions for review in the district courts of appeal. This being the case, the conclusion seems warranted that legislative discretion to make the new APA applicable to workmen's compensation proceedings was effectively foreclosed by the Scholastic Systems holding.

In a somewhat similar vein, Justice Adkins was apparently unaware that workmen's compensation proceedings had been expressly exempted from the new APA during the 1977 legislative session, albeit in circumstances which made it impossible for most members of the House of Representatives even to be aware that they were doing so.98

In summary, the foregoing review of the appellate opinions handed down by Florida courts during the brief period since enactment of the new APA in 1974 reveals general—indeed, nearly unanimous—acquiescence in the clearly stated intent of the legislature that the new act was intended to preempt the subject matter of administrative procedure and to constitute the sole statutory basis for the procedures of all state agencies relating to rulemaking, agency orders, administrative adjudication, and judicial review of administrative action.

A legislative act "does its thing," whatever that may be, when it takes effect. By its own terms, chapter 74-310 took effect on January 1, 1975. Part of what it did was to replace existing provisions relating to the named elements of administrative procedure—in effect, repealing them. Such repeal necessarily occurred on January 1, 1975.99

B. Have the Repealed Provisions Been Revived?

As we have seen, the 1974 enactment of the new APA resulted in the implied repeal of hundreds of provisions of the Florida Statutes

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(2) cannot apply as a predicate for review by the district courts of appeals in workmen's compensation cases. We have just above elucidated the judicial nature of the IRC review; moreover, JIC hearings are not "administrative action" in this sense but rather are quasi-judicial in nature and therefore not within the purview of Art. V, § 4(b) (1) and (2) either.

307 So. 2d at 171-72.

97. FLA. CONST. art. V. § 4(2) reads: "[d]istrict courts of appeal shall have the power of direct review of administrative action, as prescribed by general law."

98. Ch. 77-290, § 12, 1977 Fla. Laws 1284 (current version at FLA. STAT. § 120.52(1) (Supp. 1978)).

99. Ch. 74-310, § 6, 1974 Fla. Laws 952 (uncodified).
relating to rulemaking, agency orders, administrative adjudication, and judicial review of administrative action. Yet, by its enactment of chapter 78-95, amending the repealer provision of the APA by adding the element of conflict with chapter 120 and then proceeding to conform existing law to the new APA on the basis of this amended statement, the 1978 legislature acted as though it were writing on a new slate. Was it simply ignoring the repeals that had been enacted in 1974? Or was there some doctrinal basis for the 1978 legislature's believing that the repealed provisions had somehow been revived and that the 1978 options were as open as those existing in 1974?

The question is basically one of the reasonableness and legitimacy of the 1978 legislature's action. It would not have been reasonable for it simply to have ignored the 1974 repeals. Thus, it would seem that a judgment that it acted reasonably must rest on some notion that the repealed provisions had been revived.

1. **Revival by Continued Publication in the Florida Statutes**

Statutory provisions that are repealed by implication can be physically removed from the codified law only by further legislative action. Therefore, as a consequence of the legislature's failure to enact the reviser's bill that was prepared pursuant to the mandate of section 3 of chapter 74-310, the hundreds of provisions that had been repealed in 1974 as having been replaced by the new APA continued to appear as part of the published law in the ensuing editions of the Florida Statutes.

There is some basis for arguing that this republication in the 1975 Florida Statutes did indeed have the effect of reviving the various repealed provisions. This conclusion results from the notion that the biennial adoption of the Florida Statutes as the official law of the state constitutes a reenactment of those portions of the particular edition that are adopted as positive law. The notion has support among the several jurisdictions that periodically adopt their codifications of general law into positive law.

Before examining the relevant Florida cases, it seems appropriate briefly to describe Florida's continuous statutory revision program. The program is contained in a series of sections of chapter 11 of the

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Florida Statutes. By means of the enactment, at each odd-year regular session, of the so-called "adoption bill," which amends and reenacts each of these sections, the following things are accomplished:

1. The portions of the preceding regular edition of the Florida Statutes that are carried forward unchanged into the edition that will be published following that odd-year session are adopted as the official law of the state.

2. Statutes of a general and permanent nature enacted at the preceding odd-year regular session or prior thereto, which are omitted from the forthcoming edition of the Florida Statutes, are repealed. Actually, such a repeal would be extremely rare.

3. Various categories of statutes not of a general and permanent nature are saved from repeal even though omitted from the forthcoming edition of the Florida Statutes.

4. Statutes enacted subsequently to the preceding odd-year regular session are saved from any possible implication of having been repealed by the adoption of the Florida Statutes. The Florida Statutes version of such statutes shall be prima facie evidence of the law in all courts of the state.

5. The repeal of any statute by operation of the continuous statutory revision program is not to affect any right accrued before remedy where a suit is pending.

In summary, as a result of Florida's continuous statutory revision program, each regular edition of the Florida Statutes contains statutory text having two distinct evidentiary qualities. The portions carried forward unchanged from the preceding regular edition are enacted into positive law and become the best evidence of the laws included therein. The portions representing the product of sessions subsequent to the preceding odd-year regular session—i.e., the intervening even-year session, the current odd-year session, and any special sessions called during that period—are made prima facie

103. Fla. Stat. § 11.2421 (1977), provides:

The accompanying revision, consolidation and compilation of the public statutes of 1975 of a general and permanent nature, excepting tables, rules, indexes and other related matter contained therein, prepared by the joint committee under the provisions of § 11.242, together with corrections, changes and amendments to and repeals of provisions of Florida Statutes 1975 enacted in additional reviser's bill or bills by the 1977 Legislature, is adopted and enacted as the official statute law of the state under the title of "Florida Statutes 1977" and shall take effect immediately upon publication. Said statutes may be cited as "Florida Statutes 1977," "Florida Statutes" or "F.S. '77."
104. Id. § 11.2422.
105. Id. § 11.2423.
106. Id. § 11.2424.
107. Id. § 11.242(5)(c).
108. Id. § 11.2425.
evidence of the law. As to these latter provisions, the best evidence of the law continues to be the acts of the legislature until publication of the next regular edition of the Florida Statutes.\textsuperscript{109} The leading Florida case in support of the proposition that the adoption of the Florida Statutes as the official law constitutes a reenactment of any repealed provisions that are, for any reason, republished therein was the 1955 case of \textit{L’Engle v. Forbes}.\textsuperscript{110} Although a relatively isolated holding, it is almost foursquare with the doctrine under discussion. \textit{L’Engle} involved a suit to enforce the homestead tax exemption by a homeowner who had been called to military service. Although the deadline for filing was April 1, he did not file until October 1. He sought to take advantage of a 1943 act, which excused veterans from the filing deadline. However, the 1943 act had provided that “[t]his Act shall cease to operate one year after the present hostilities cease.”\textsuperscript{111} Although the reference to “present hostilities” was obviously intended to mean World War II, and the statute had therefore expired, it was inadvertently carried forward into the succeeding editions of the Florida Statutes including that of 1951. The trial judge rejected the contention that the inadvertent inclusion of the expired statute in the Florida Statutes could have the effect of reenacting it. However, the supreme court unanimously reversed, ruling, in an opinion written by Justice B.K. Roberts, that it was unimportant that the statute was inadvertently included in a later version of the Florida Statutes. What was important was that “the Legislature adopted and enacted ‘the accompanying revision, consolidation and compilation of the public statutes of this state . . . as the only official statute law of this state.’”\textsuperscript{112} Justice Roberts concluded that the 1943 law “was in full force and effect during the months of January, February, and March of 1953.”\textsuperscript{113}

For the purpose of judging the strength of the precedent of the \textit{L’Engle} holding, it would seem that expiration of a statute by its own unambiguous terms would certainly be the equivalent of its expressed repeal. On the other hand, it was an isolated holding, as there is apparently no equivalent holding elsewhere in Florida case law.

\begin{itemize}
  \item \textsuperscript{109} The reason for the period of delay, varying from two to three years, before the codified version of the legislative product is enacted into positive law is to provide an opportunity for scrutiny of the newly edited version of the law by the practicing bar and others before it is adopted as the official law of the state. In this way, the codified law is protected against possible error by the reviser.
  \item \textsuperscript{110} 81 So. 2d 214 (Fla. 1955).
  \item \textsuperscript{111} Ch. 21880, § 4, 1943 Laws of Florida 383 (repealed 1953).
  \item \textsuperscript{112} 81 So. 2d at 217.
  \item \textsuperscript{113} \textit{Id}.
\end{itemize}
There are, however, other lines of judicial holdings that contribute elements necessary to this outcome and which should therefore be briefly traced. The notion that the enactment of a code constitutes an enactment or reenactment of the provisions making up that code was expressed as early as the 1893 case of *Mathis v. State.* The opinion resulted from the court’s review of a trial on an indictment for first-degree murder. The statute in effect prior to the adoption of the Revised Statutes of 1892 provided for twenty peremptory challenges for the defense in such a trial. This number was reduced to ten by the Commissioners appointed to revise the statutes and duly reported to the legislature along with their proposed revision. The court rejected the defendant’s claim that he was entitled to twenty challenges, saying: “we announce our conclusion that the Revised Statutes were constitutionally adopted by the act of 1891 (chapter 4055,) and the matter therein contained, from the time the statutes went into effect,—June 13, 1891,—became the statutory laws of a general nature in force in this state.”

The importance of this case as precedent is lessened by the circumstance that the change initiated by the Commissioner was expressly called to the attention of the legislature. Nevertheless, it is important here for its recognition of the code’s adoption as an enactment of its individual provisions.

In the 1936 case of *Inman v. Davis,* the Florida Supreme Court again held that adoption of the Revised Statutes of 1892 had the effect of enacting a substantive change that was initiated by the Commissioners. The trial court had dismissed an action on a note against the executrix of the will of a deceased person as being beyond a special two-year statute of limitations applying only to suits on causes of action against deceased persons, though well within the five-year general statute. As originally enacted, the provision read, in pertinent part:

> If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his Executors or Administrators after the expiration of that time and within one year after the issuing of letters testamentary or of administration.

It is apparent that what was intended was to provide for an exten-

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114. 12 So. 681 (Fla. 1893).
115. Id. at 686.
116. 169 So. 741 (Fla. 1936).
117. Id. at 742 (quoting McClellan’s Digest, 1881).
sion of time beyond the possible expiration of the regular limitation statute in the event of the death of the person against whom the cause of action lay.

However, in preparing the Revised Statutes of 1892 the Commissioners transformed the provision into a limitation that applied even when the effect was to shorten the otherwise applicable general statute of limitation. The revised version read that “[i]f a person against whom a suit . . . may be brought . . . die, such suit shall not be brought . . . against his executor or administrator after two years from the issuance of letters testamentary or of administration.”118 Citing the Mathis case as authority, the court held that the Commission-initiated change had become the law of the state as a consequence of the adoption of the Revised Statutes of 1892 as positive law. From the opinion, there is no indication that this change had been expressly called to the attention of the legislature.

The 1911 case of Christopher v. Mungen,119 extended the principle to another result. It stated for the first time the principle that inclusion of a statute in an adopted code had the effect of curing any defect in the title of the original act.120 However, this early statement must be considered dictum, since the constitution then in effect did not require that the subject matter be set out in the title of a legislative act. Nevertheless, this holding has since been repeated many times, with the salutary consequence of putting a limitation of approximately two years on what would normally become by then a frivolous ground of attack on legislation.121 Subsequent cases have refined this application of the doctrine by holding that the principle applies whether or not the constitutional insufficiency of the act’s title has been adjudicated,122 and that the curing of the title operates from the time of the revision and not from the time of the enactment of the original statute.123

Of course, the various consequences that flow from adoption of a codification, including the curing of defective titles, occur only in the case of an adoption as positive law. When the adoption is of an

118. Id. (quoting Revised Statutes of 1892 § 1284(2)).
119. 55 So. 273 (Fla. 1911).
120. The constitutional title requirement is substantially the same in the present constitution as in the Constitution of 1885, though there is a minor change of wording. As it now appears, art. III, § 6, of the Florida Constitution, reads: “Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”
121. Belcher Oil Co. v. Dade Cty., 271 So. 2d 118 (Fla. 1972); McConville v. Ft. Pierce Bank & Trust Co., 135 So. 392 (Fla. 1931); Richey v. Town of Indian River Shores, 337 So. 2d 410 (Fla. 4th Dist. Ct. App. 1976), aff’d, 348 So. 2d 1 (Fla. 1977).
122. See State v. Lee, 22 So. 2d 804 (Fla. 1945).
123. Thompson v. Intercounty Tel. & Tel. Co., 62 So. 2d 16 (Fla. 1952).
unofficial compilation as prima facie evidence of the law, no such result occurs. The critical element is the legislative enactment of the codification into positive law, as with the Florida Statutes.

Another series of Florida cases, though based on rather doubtful logic, serves to illustrate further the willingness of the courts to treat adoption of a code as enactment or reenactment of the specific provisions contained in the code. In Depfer v. Walker, decided in 1935, the Florida Supreme Court held that the reenactment of a statute through the adoption of the Revised Statutes of 1920 had the effect of approving the court's prior construction of the statute and making it part of the statutory law.

The fault in the logic of such a holding is in the assumption that the legislature, in enacting a document consisting of some three and a half million words, is at all likely to be aware of judicial constructions that have previously been placed on various provisions. Even so, the proposition has become fairly rooted in the course of later holdings, some of which did not even identify the nature of the enactment relied upon. In the 1966 case of Delaney v. State, the court addressed the question of "whether these earlier constructions of the statute have become a part of the statute and the law of this state in the sense that these decisions, together with the statutory language, afforded the appellant sufficient notice that acts committed . . . were prohibited by the statute." The court concluded that they did and went on to explain that "[i]n this state, as in most others, the rule prevails that in reenacting a statute the legislature is presumed to be aware of constructions placed upon it by the highest court of the state, and, in the absence of clear expressions to the contrary, is presumed to have adopted these constructions." Cursory examination shows that the statute in question had never been amended; therefore, the only "reenactment" that had occurred was that consisting of the adoption of the Florida Statutes.

As previously suggested, although the Florida precedents seem on balance to favor the doctrine that previously repealed statutes are revived as a consequence of being carried forward into a codification that is enacted into positive law, there are contrary precedents. Notwithstanding Depfer, the Florida Supreme Court, in the 1953 case of Grimes v. State, rejected the notion that publication of an abortion statute in successive editions of the Florida Statutes with-

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124. Town of Monticello v. Finlayson, 23 So. 2d 843 (Fla. 1945).
126. 169 So. 660 (Fla. 1935).
127. 190 So. 2d 578, 581 (Fla. 1966).
128. Id.; accord, Walshingham v. State, 250 So. 2d 857 (Fla. 1971).
129. 64 So. 2d 920 (Fla. 1953).
REPEALS BY IMPLICATION

out change had the effect of making the supreme court’s construction part of the statute. However, the court’s prior construction, arrived at by considering the statute in para materia with a related statute, had departed somewhat from the literal meaning. Therefore, it was reasonable to conclude that by successively reenacting the statute without change, the legislature was simply expressing an intent that the statute be applied as meaning what it said.

In Brewer v. Gray, 130 decided in 1956, the court held that continued publication of section 10.01, Florida Statutes, 131 which embodied the legislative apportionment enacted in 1945, through the 1955 edition of the Florida Statutes did not satisfy the constitutional mandate requiring decennial apportionment of the senate. 132 The court, through Justice Thornal, held that section 10.01 “remains the law of Florida until repealed or superseded. However, in and of itself, it cannot be construed as amounting to a compliance with a constitutional requirement that could not be performed until 1955 at the earliest.” 133

Were it not for the requirement that each decennial apportionment be based on the most recent regular federal or state census, this holding would be difficult to justify, in view of the decision in L’Engle v. Forbes less than a year earlier. Perhaps the different reasoning simply reflects the greater maturity of a decision en banc, as here, as compared with a decision by a division of the court, as in the L’Engle case. Chief Justice Drew and Justice Terrell, both of whom concurred in the L’Engle holding, also concurred here. However, Justice Roberts, who wrote the opinion in L’Engle, may have felt some misgivings, for he concurred here only in the conclusion drawn by the majority.

130. 86 So. 2d 799 (Fla. 1956).
132. FLA. CONST. art. VII, § 3.
133. 86 So. 2d at 804-05. The court explained:
While we have held that the inclusion of a general Act of the Legislature in the statutory revision will cure a defect in the title of the Act, as it originally passed the Legislature, . . . we cannot conclude that the Legislature of 1955 can perform the constitutional duty imposed upon it in 1955 by including in the Revision a reapportionment Act enacted in 1945. The third sentence of Article VII, Section 3, of the Florida Constitution, provides that the preceding regular Federal or State Census which shall have been taken nearest any apportionment shall control in the making of any such reapportionment. An examination of Section 10.01, Florida Statutes 1955, F.S.A., will reveal that it became effective at the general election on the 5th day of November, 1946. It could hardly be logically contended that a reapportionment effective in November, 1946, could have been based upon the Federal Census taken in 1950, which we judicially know to be the last preceding regular Federal Census and the one which would control any reapportionment made by the 1955 Legislature . . . .

Id. at 804.
Probably the most compelling precedent contrary to the view that previously repealed statutes are revived as a consequence of being carried forward into a codification that is enacted into positive law is the 1965 case of *Massachusetts Bonding and Insurance Co. v. Bryant.*134 There, the First District Court of Appeal affirmed a summary judgment in favor of a materialman suing on a performance bond, holding that in view of the prior invalidation of the one-year statute of limitations contained in section 255.05, Florida Statutes,135 the case was controlled by the regular twenty-year period. The basis for the earlier invalidation of the one-year period had been that its attempted enactment, as an amendment to section 255.05 by chapter 59-491, failed to republish the section as amended, as required by the Florida Constitution.136 The court rejected the defendant's contention that this deficiency in chapter 59-491 had been cured by the inclusion of the amended section 255.05 in the 1961 Florida Statutes and its adoption as positive law. The court explained that while it may be true that the biennial act revising the Florida Statutes will cure defects such as defects in title or punctuation and spelling errors, "this type of legislation cannot be used as a device by which to create new statutory law, vary the existing law, or cure an unconstitutionality of content as previously determined by the judicial branch of government."137 The court quoted from *State v. Lee,* where the supreme court held that title defects are cured by reenactment of the statutes but that "'[i]ncorporation in a general revision of the statutes would not cure a particular act of any unconstitutionality of content.'"138 On appeal, the supreme court affirmed and remarked that "the reenactment of the Florida Statutes by Chapter 61-1 did not cure the infirmity of Chapter 59-491, . . . since the defect was not of such kind as could be cured by a general reenactment of existing statutes, a matter fully discussed in *State v. Lee.*"139

Read together and literally, these opinions of the First District Court of Appeal and the Florida Supreme Court seem to constitute an almost insurmountable obstacle to the existence in Florida law of the doctrine that the so-called reenactment of a previously re-

134. 175 So. 2d 88 (Fla. 1st Dist. Ct. App. 1965), aff'd, 189 So. 2d 614 (Fla. 1966).
136. *FLA. CONST.* of 1885, art. III, § 16 (1950) read: "[n]o law shall be amended or revised (by reference) to its title only but in such case the act as revised or section, or subsection of a section, or paragraph of a subsection of a section, as amended, shall be reenacted and published at length." (current version at *FLA. CONST.* art. III, § 6).
137. 175 So. 2d at 92.
138. *Id.* (quoting *State v. Lee,* 22 So. 2d 804, 807 (Fla. 1945)).
pealed statute by the biennial adoption act brings about the revival of such provision. After all, to restore to full effect a statute that has previously been repealed by sovereign act of the legislature is surely equivalent to creating new statutory law or varying the existing law. It is surely a matter of "content."

However, it is strongly arguable that the *Massachusetts Bonding & Insurance Co.* holding will not withstand critical scrutiny, in that it grossly misapplied the precedent that it purports to rely upon. In *State v. Lee*, when the court held that "incorporation in a general revision of the statutes would not cure a particular act of any unconstitutionality of content," it was rather obviously referring to "content" in the sense of subject matter outside the power of the legislature to enact. The statute in *State v. Lee* had been challenged on three grounds: (1) that it had a defective title; (2) that the tax imposed and the classification made were unreasonable and arbitrary; and (3) that the effect of the act was to prevent legitimate, open, competitive bidding. Although most of the discussion was directed to the first point, the court also held the statute to be invalid on both of the other two grounds. The second and third consequences lie outside the legislative power, no matter what procedure is followed.

However, this is not the kind of defect that was involved in the *Massachusetts Bonding & Insurance Co.* case. The defect there was procedural; the legislature had simply failed to comply with the republication requirement of article III, section 16 of the Constitution of 1885. Actually, the underlying purpose of the republication requirement is much the same as that of the title requirement found in the same section; it is to prevent surprise, "to inform both the legislature and the public of the nature and extent of proposed changes in existing laws." 140

On balance—and critically read—the Florida precedents provide substantial support for the proposition that repealed statutes that are carried forward into the succeeding edition of the Florida Statutes are revived by reenactment. However, these precedents are not sufficiently firm—or notorious—to warrant any serious notion that the legislature may actually have acted on knowledge of them in arriving at the solution enacted as chapter 78-95.

Actually, the lack of precedent on this issue is not surprising. The reason lies in the infrequency with which the courts are confronted with the issue. Although the principle would apply alike to all repeals, both expressed and implied, the occasions for its operation

would be expected to arise primarily in the event of implied repeals—indeed, with implied repeals of a kind that occur only infrequently.

The problem is that statutes that are repealed by implication cannot be physically deleted from the Florida Statutes without further legislative action—often in the form of a reviser's bill. If, for any reason, such further legislative action is not taken, the impliedly repealed section is carried forward into the next edition of the Florida Statutes. In the case of implied repeals resulting from conflict with a subsequent enactment, however, the notion under discussion—i.e., revival by reenactment of repealed statutes that are carried forward into the succeeding edition of the Florida Statutes—would only be of slight significance. The reason is that there is an alternative ground for decision; the basis for the implied repeal in the first place would continue to exist. Thus, even if the revived statute and the subsequent enactment with which it had been adjudged in irreconcilable conflict were both published in the Florida Statutes, the conflict between them would persist, and there is adequate authority that the courts may look behind the codification to ascertain which of the conflicting provisions constitutes the later expression of the sovereign will. 4

We are left, then, with the relatively unique form of implied repeal that occurred as a consequence of the enactment of the new APA—i.e., repeal based not on conflict, but on the enactment of a comprehensive revision of an entire subject matter and, even more specifically, on an expressed statement of legislative intent that the new law replace all existing statutes relating to the subject matter. True, some of the statutes so repealed could also have been considered as having been impliedly repealed as being in irreconcilable conflict with the new APA. However, there were also many provisions which were not in conflict with the new APA. Once revived by reenactment, any such provision would remain permanently viable, potentially confronting any court in which it was relied upon with the question of whether it had been revived by republication in the Florida Statutes. Since the type of repeals involved in the enactment of the new APA occur so seldom, the courts have had very little opportunity to enunciate the doctrine of revival by reenactment of previously repealed statutes.

Of course, the most important consideration in the matter under discussion, as with most questions of statutory meaning, is the intent of the legislature. Therefore, it is reasonable to ask, would the

141. Lykes Bros. v. Bigby, 21 So. 2d 37 (Fla. 1945); Hillsborough Cty. Comm’rs. v. Jackson, 50 So. 423 (Fla. 1909).
legislature have intended the odd-year adoption of the Florida Statutes to constitute reenactment of provisions repealed by implication, but which the legislature had not had a reasonable opportunity to delete from the statutes? The question is especially pertinent in the case of implied repeals based, not upon conflict, but upon revision of an entire subject matter and also upon such expressed language as that contained in the APA statement of legislative intent—though occurring during an odd-year session. Since it is hardly reasonable to expect the legislature to rid the Florida Statutes of the impliedly repealed provisions during the same session in which the comprehensive revision occurs, such provisions will be carried forward into the edition of the Florida Statutes to be published following that odd-year session and be adopted as part of the positive law of the state by that session's adoption act.

At the risk of complicating the doctrine under discussion, it should probably be understood as being operative only after the legislature has had a reasonable opportunity to delete the repealed provisions. In the circumstances just described, this would defer the revival of the impliedly repealed provisions until the next ensuing adoption of the Florida Statutes as positive law, two years later.

2. Revival by Chapter 78-95

By the enactment of House Bill 1075 into law as chapter 78-95, the Florida Legislature purported to lay at rest the prevailing uncertainty concerning the relationship between the new APA and preexisting statutory law relating to administrative procedure. Section 1 stated the purpose of the act was "to repeal or amend various provisions of the Florida Statutes containing procedural language superseded or made redundant by chapter 120 of the Florida Statutes (the Administrative Procedure Act). The act is designed to place the provisions affected into conformity with chapter 120, except where expressly noted to the contrary." An appropriate disclaimer followed: "Failure of this act to amend or repeal any provision in the Florida Statutes does not imply that that provision is not in conflict with, superseded by or unnecessary in light of chapter 120." However, it apparently referred merely to the relatively few provisions that might have been omitted by inadvertence.

The operable thrust of the act was contained in: (1) its amendment of section 120.72(1), the codified version of the statement of legislative intent from the 1974 act, which added the limiting factor

142. Ch. 78-95, § 1, 1978 Fla. Laws 146 (codified at Fla. Stat. § 120.722(1) (Supp. 1978)).
143. Id. (codified at Fla. Stat. § 120.722(4) (Supp. 1978)).
of conflict with chapter 120, as a prerequisite for the superseding of an existing procedural provision by chapter 120; and (2) its deletion or amendment of numerous provisions of the Florida Statutes to conform them to chapter 120.

Since the house subcommittee that drafted House Bill 1075 started with the reviser’s bill that had been prepared pursuant to the mandate contained in section 3 of chapter 74-310, and updated through the 1976 legislative session, it is possible to compare the product of the subcommittee’s labor with the reviser’s bill and draw some broad conclusions concerning the 1978 action. The reviser’s bill dealt with approximately 650 sections of the Florida Statutes, as containing provisions that related to rulemaking, agency orders, administrative adjudication, or judicial review, and therefore being repealed as having been replaced by the new APA. Of these 650 sections, approximately half were carried forward into chapter 78-95 unchanged. As to the provisions contained in these sections, the subcommittee apparently concluded that they were in conflict with chapter 120. Another one-fourth of the 650 sections dealt with by the reviser’s bill were carried forward into chapter 78-95 with some change. As to these sections, it is not possible to draw generalizations in the absence of closer analysis. Presumably, the changes in the sections referred to represent some degree of withdrawal from the extent of the prior repeal as the result of the absence of conflict with chapter 120.

Finally, one-fourth of the 650 sections dealt with by the reviser’s bill were omitted entirely from chapter 78-95, and the provisions contained in those sections were therefore retained in the Florida Statutes as not being in conflict with chapter 120. Is there any basis for concluding that such exclusion from chapter 78-95 resulted in the revival of the previously repealed provisions?

For one thing, it is necessary to negate any notion that the theory discussed in the preceding section could have resulted in the revival of the sections carried forward unchanged into the 1978 Supplement to the Florida Statutes. Of course, the reason for this confident assertion is that a necessary element of that theory is lacking, since the 1978 Supplement has not been enacted into positive law and will not be until the 1981 legislative session.144

Of course, the 1978 legislature could have brought about whatever degree of revival of previously repealed provisions it desired by an express provision of chapter 78-95.145 However, no such provision

144. The normal procedure has been to adopt as the official law of the state those portions of the ensuing edition of the Florida Statutes that were carried forward unchanged from the preceding regular edition.

145. Since the prohibition of art. III, § 6 of the Florida Constitution against amendment
was contained in chapter 78-95; no language of that act even pur-
ports to restore to active status the previously repealed provisions. It can only be concluded, therefore, that enactment of chapter 78-
95 did not result in the revival of the provisions repealed in 1974 as having been replaced by the new APA.

3. **Revival by Subsequent Legislative Construction**

By section 11 of chapter 75-191, the 1975 legislature created a new
section of chapter 120, to read, in pertinent part: "Nothing in this
chapter shall be construed to repeal any provision of the Florida Statutes which grants the right to a proceeding in the circuit court in lieu of any administrative hearing or to divest the circuit courts of jurisdiction to render declaratory judgments under the provisions of chapter 86." Although the new section is worded in the language of "saving from repeal," its operative effect, if any, is the restoration or revival of statutes previously repealed. After all, as previously noted, the repeals by section 3 of chapter 74-310 took effect on January 1, 1975, prior to the legislative session that enacted chapter 75-191. This effort of the 1975 legislature to alter the 1974 repeals as to the two categories of procedural statutes is really less impor-
tant for what was actually accomplished than as example of the kind of legislative maneuvering that is likely to be encountered in the confused circumstances under discussion.

Interestingly, the appellate courts of the state have reached sub-
stantially the same conclusions as has the author concerning the state of the law following enactment of chapter 75-191, but by radic-
ally different explanations of the processes involved. Thus the courts have apparently accepted without question the efficacy of section 11 of chapter 75-191 to revive or restore previously repealed statutes; the writer would argue the opposite—that the statute

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by reference does not extend to the revival of repealed provisions, as is the case with the corresponding provisions of the constitutions of some other states, there is apparently no necessity for such an act to set out the revised laws verbatim.

146. Ch. 75-191, § 11, 1975 Fla. Laws 368 (current version at Fla. Stat. § 120.73 (1977)).
147. The ambivalence is well illustrated by the opinion of the First District Court of Appeal in a recent case in which it was applying the provision. State v. Willis, 344 So. 2d 580 (Fla. 1st Dist. Ct. App. 1977). The opinion of Judge Smith raises the question of which of the previously repealed provisions "the 1975 Legislature restored." Id. at 585.

However, the same opinion states that "[n]either may it be supposed that, by enacting Chapter 75-191, the legislature preserved from repeal the baffling array of disparate statutes." Id. at 587 (emphasis added).

148. See Gulf Pines Memorial Park, Inc. v. Oaklawn Memorial Park, Inc., 361 So. 2d 695 (Fla. 1978); Adams Packing Ass'n v. Florida Dep't. of Citrus, 352 So. 2d 569 (Fla. 2d Dist. Ct. App. 1977); Department of Transp. v. Morehouse, 350 So. 2d 529 (Fla. 3d Dist. Ct. App. 1977), cert. denied, 358 So. 2d 129 (Fla. 1978); United Faculty v. Branson, 350 So. 2d 489 (Fla. 1st Dist. Ct. App. 1977); School Bd. v. Mitchell, 346 So. 2d 562 (Fla. 1st Dist. Ct. App. 1979).
could not have such an effect. The reason is that the 1975 enactment was wrongly addressed. The enactment amended chapter 120 of the Florida Statutes by adding a new section; and it addressed its statement of legislative construction to chapter 120, saying that "[n]othing in this chapter shall be construed to repeal any provision . . . ."

But chapter 120 did not—indeed, could not—repeal anything. The repeal of law is a dynamic transaction that can only be accomplished by legislative act. Its quality is essentially the same—because it is the opposite—as the enactment of law, and of course it would never be asserted that a statute was enacted by a codified law. The 1974 repeals were accomplished by section 3 of chapter 74-310. It is true, of course, that section 3 was later codified as section 120.72(1), Florida Statutes; however, it accomplished the repeal as a section of an act of the legislature.

In the peculiar circumstances involved here, this erroneous judicial construction of chapter 75-191 was apparently harmless. As can be seen by the portion quoted above, chapter 75-191 directed its attempted nullification of prior repeals to two categories of law. As to provisions granting "the right to a proceeding in the circuit court in lieu of any administrative hearing," the courts concluded that the statutes that had been repealed in 1974 and then revived by chapter 75-191 were those providing for judicial enforcement of administrative action. The leading statement was in an opinion authored by Judge Smith for the First District Court of Appeal:

But the 1975 legislation was effective to preserve the effect of statutes granting circuit courts jurisdiction of proceedings "in lieu of an administrative hearing." Such statutes abound, and they are entirely different from the statutes, replaced by the 1974 Act, which provided for judicial review of adjudicative orders. Thus, certain agencies are authorized by statute to seek circuit court injunctions against violation of statutory standards of administrative regulations pertaining to citrus, tobacco, cattle, poultry, and other agricultural and business enterprises, and the injunction is plainly in lieu of other administrative remedies that may be available. The public records act, Chapter 119, and the public meetings act, Section 286.011, plainly authorize suits for injunction in circuit courts in lieu of administrative remedies. Chapter 75-191 made clear that those statutes should not be considered as replaced or repealed by Section 120.72(1) of the 1974 Act.149

But statutes providing for judicial enforcement of administrative action were never reached by the 1974 repeal in the first place. Only those statutory provisions that related to rulemaking, agency orders, administrative adjudication, or judicial review were to be considered as having been replaced by the new APA. Although "enforcement of administrative action" was belatedly added as an element of administrative procedure in 1978, it was not one of the listed elements at the time of the 1974 repeals. Therefore, it would seem that the revival that could not be was applied to repeals that never occurred, and no harm was done.

As to the second category of law identified in section 11 of chapter 75-191—i.e., jurisdiction of the circuit courts "to render declaratory judgments under the provisions of chapter 86"—the courts never specified the precise extent of the 1974 repeal, apparently being satisfied to hold, in effect, that whatever was repealed was revived by chapter 75-191. The present writer would argue that the Declaratory Judgments Law was repealed by the 1974 act to the extent that it related to, or provided for, judicial review of administrative action. After all, judicial review was the only one of the four elements of administrative procedure listed to which statutes having to do with judicial procedures could relate.

Another 1977 holding by the First District Court of Appeal had the effect of bringing the judicial view and this author's view into practical, if not doctrinal, agreement. In School Board v. Mitchell, Judge Boyer, writing for the court, built on the earlier analysis of Judge Smith in the context of the declaratory judgment form of action. He indicated that review of the cases confirmed a growing judicial deference to the results of the administrative process, especially when they followed quasi-judicial proceedings offering the essential safeguards of notice and hearing. Observing that the circumstances requiring the intervention of the circuit courts in the administrative process had been considerably narrowed by the 1974 act's extension of the judicial-type hearing to substantially all forms of administrative action, Judge Boyer concluded that "in the vast majority of cases, the sole method of challenging agency action, whether formally recognized as an 'order' or a 'rule', as it affects the substantial interests of a party is by petition for review to the appropriate District Court of Appeal." In short, the declaratory judgment remedy can be resorted to only in extraordinary circumstances. Since this is tantamount to saying that the declaratory judg-

150. Ch. 78-95, § 57, 1978 Fla. Laws 146 (codified at Fla. Stat. § 120.72(1) (Supp. 1978)).
151. 346 So. 2d 562 (Fla. 1st Dist. Ct. App. 1977), cert. denied, 358 So. 2d 132 (Fla. 1978).
152. Id. at 568.
ment procedure is not normally available for the purpose of obtaining judicial review of administrative action, the result is the same as if chapter 75-191 were held ineffectual to nullify the 1974 partial repeal of chapter 86.

In *Department of Transportation v. Morehouse*, the Third District Court of Appeal affirmed that the limitation on resort to the declaratory judgments procedure announced by the First District in the *Mitchell* case was to be judicially defined and rigorously enforced. Although finding that the circuit court did have jurisdiction in the circumstances of that particular case, the court warned, "[w]e admonish against attempts to evade appropriate review procedures by clothing claims for coercive relief in raiment of dubious constitutional dimensions in order to bootstrap such claims into subjects for declaratory decrees." In summary, the effort of the legislature, by enactment of section 11 of chapter 75-191, to revive specified categories of statutes repealed in 1974 as having been replaced by the new APA, proved abortive by any standards. Moreover, the extent of confusion with which the statute was applied by the courts of the state speaks loudly for more direct forms of legislative action.

V. Conclusions

In view of the extended discussion that has been devoted to some of the principles encountered, it seems appropriate to recapitulate the main facts that have been established:

1. At the time of the original enactment of the new APA in 1974, the legislature was forthright in addressing the problem of the relationship that was to exist between the new act and existing statutory provisions governing the procedures followed by state agencies.

2. The relationship provided for was that the new APA was to constitute the sole statutory law on the subject of administrative procedures for virtually all state agencies. It was provided that the new act was to replace all provisions of the 1973 Florida Statutes relating to rulemaking, agency orders, administrative adjudication, and judicial review of administrative action. This, of course, amounted to the implied repeal of such provisions.

3. Pursuant to a mandate contained in the 1974 act, a reviser's bill was prepared identifying approximately 650 Florida Statutes sections containing repealed provisions.


154. *Id.* at 533; *accord*, Gulf Pines Memorial Park, Inc. v. Oaklawn Memorial Park, Inc., 361 So. 2d 695 (Fla. 1978); Department of Revenue v. AMREP Corp., 358 So. 2d 1343 (Fla. 1978); Carrollwood State Bank v. Lewis, 362 So. 2d 110 (Fla. 1st Dist. Ct. App. 1978); Adams Packing Ass'n v. Florida Dep't of Citrus, 352 So. 2d 569 (Fla. 2d Dist. Ct. App. 1977).
4. The legislature failed to review and pass the reviser's bill in the 1975, 1976, and 1977 sessions. Consequently, the repealed provisions continued to be published in the Florida Statutes.

5. Florida case law provides substantial support for the proposition that, as a result of continued publication in the Florida Statutes and the biennial enactment of the Florida Statutes into positive law, the various provisions that were repealed in 1974 as having been replaced by the new APA have been revived. However, before this proposition can be relied upon, it requires a more authoritative judicial statement than it has received to this time.

6. The 1978 legislature enacted chapter 78-95, which purported to settle the question of the relationship between the new APA and preexisting statutory provisions relating to administrative procedures required of state agencies. Insofar as relevant here, this act:
   a. Amended the 1974 statement of legislative intent to provide that existing law relating to the named elements of administrative procedure is superseded by the new APA only to the extent that it conflicts with chapter 120.
   b. Amended approximately 325 Florida Statutes sections, conforming them to the amended statement of legislative intent.
   c. Added the elements of "licensing procedure" and "enforcement of administrative action" to the repeal formula codified in section 120.71(1).
   d. Extended the amended repeal formula of section 120.72(1) to provisions contained in Florida Statutes 1977.

7. Aside from the possible argument described in paragraph 5 above, no doctrinal basis exists for finding that provisions repealed in 1974 as having been replaced by the new APA, and not subsequently repealed by chapter 78-95 or another act of the legislature, have since been revived. The other possibilities explored were:
   a. That chapter 78-95 contained some statement of legislative intent that such provisions be revived.
   b. That there was such a revival pursuant to subsequent legislative construction of the repeal language of chapter 74-310, as was attempted by enactment of section 11 of chapter 75-191.

A. The Consequences

Where do the facts established by the foregoing leave us? What are the consequences for the state agencies and for members of the regulated public who consult the Florida Statutes to determine the procedures they should follow in pursuit of their rights, or to determine whether the procedures followed by a state agency are proper and sufficient?

The consequences for the state agencies are probably not very
serious. The basic change of direction resulting from the 1978 injection of the concept of "conflict with chapter 120" into the APA's statement of legislative intent, even if facially accepted, does not in any way relieve the agencies from the full rigor of the new APA. It applies as before—across the board—to all agencies within its ambit. On the other hand, compliance with the new APA does not excuse an agency from also complying with other statutory provisions that are not in irreconcilable conflict with the APA.\textsuperscript{155}

However, consider the lot of a member of the public who contemplates a confrontation with a state agency and consults the current edition of the Florida Statutes to determine his procedural obligations. Assuming his sophistication and access to the necessary materials, if he finds an applicable procedural provision outside the APA he might be forced to consider the following issues: Had the provision been repealed by the 1974 act that created the new APA? Was the section published in the 1973 Florida Statutes, so as to come within the 1974 repeal? If the history note to the section shows an amendment subsequent to 1973, was the 1973 text such as to bring the provision within the repeal? Did the provision, as it existed in 1973, relate to rulemaking, agency orders, administrative adjudication, or judicial review of administrative action? Does the provision relate to "licensing procedure"? (If so, it was probably caught by the 1974 repeal as relating to "agency orders" or "administrative adjudication," notwithstanding the implication of chapter 78-95 that "licensing procedure" was a newly added element.) Even though repealed in 1974, is there some basis for concluding that the provision has since been revived? (Otherwise, why does it continue to be published as part of the state's law?) If the section in question was not repealed by the 1974 act because enacted subsequent to 1973, does it conflict with some provision of chapter 120 to the degree requisite for bringing about implied repeal or amendment?

The limiting concept of "conflict with chapter 120," added by the 1978 legislature, is so productive of potential confusion for the user of the statutes that it is deserving of separate comment.\textsuperscript{156} To begin with, there is the initial question of just which statutory provisions are subject to this limiting concept. Absent some procedure or theory for the revival of the repealed provisions prior to the 1978 session, it would not apply to a provision that was present in the

\textsuperscript{155} Lest this notion of duplicated applicability seem unrealistic, note that at least one other state makes express provision for it: "[c]ompliance with the procedures prescribed by this chapter does not obviate the necessity of complying with procedures prescribed by other provisions of the statutes." Wis. Stat. Ann. § 227.031 (West 1957).

\textsuperscript{156} Ch. 78-95, § 57, 1978 Fla. Laws 146 (current version at Fla. Stat. § 120.72(1) (Supp. 1978)).
1973 Florida Statutes. On the other hand, it does have a legitimate applicability to any provision enacted during the 1974 session or subsequently, since such provisions would not have been within the 1974 repeal and therefore would have been a proper object of legislative action in 1978.

Although the 1978 legislature repealed or amended some 475 sections of the Florida Statutes in order to bring them into conformity with the statement of legislative intent, as amended by the addition of the conflict principle, that does not relieve the user of the statutes from assessing for himself the degree of conflict between the provision he is contemplating and the APA; indeed, the 1978 act contained an express disclaimer that "[f]ailure of [this act] to amend or repeal any provision in the Florida Statutes does not imply that that provision is not in conflict with, superseded by or unnecessary in light of chapter 120."157 The "conflict" referred to is more than a mere difference; it is more than mere "inconsistency." The difference must be so great as to make the two provisions irreconcilable.158

But wherever the dividing line is drawn, there is usually room for disagreement as to whether the degree of conflict is sufficient to result in implied amendment or repeal. After all, disagreement arises among attorneys every time the issue of conflict between two statutes requires adjudication, and this is a frequent object of litigation.

A compelling example of the inherent difficulty of assessing the degree of conflict between two statutory provisions can be seen in materials already described in the present article. It will be recalled that the April 1977 report of the staff of the Joint Administrative Procedure Committee and the bill developed during the 1978 session by the Administrative Procedure Subcommittee of the House Governmental Operations Committee purported to do pretty much the same thing. Both started with the APA reviser's bill as updated following the 1976 session, and both attempted to identify those provisions marked for deletion in the reviser's bill that were also in conflict with chapter 120.

Interestingly, the degree of disagreement between these two groups of experts was substantial. The joint committee staff had approved 450 Florida Statutes sections for deletion.159 Of those, ap-

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157. Id., § 1 (current version at FLA. STAT. § 120.722(4) (Supp. 1978)).
158. See Miami Water Works Local No. 654 v. City of Miami, 26 So. 2d 194 (Fla. 1946); American Bakeries Co. v. Haines City, 180 So. 524 (Fla. 1938); Scott v. Stone, 176 So. 852 (Fla. 1937); Walton Cty. v. Board of Pub. Instruction, 161 So. 2d 45 (Fla. 1st Dist. Ct. App. 1964); 82 C.J.S. Statutes § 290 (1953); 73 AM. JR. Statutes § 392 (1974).
159. Report from Carroll Webb, Executive Director of the Joint Administrative Procedure Committee, to Senator Lewis, Chairman of the Joint Administrative Procedure Committee (Apr. 18, 1977).
proximately 100 were omitted from the subcommittee’s bill that was enacted as chapter 78-95. On the other hand, the house subcommittee included in its bill provisions contained in approximately 165 Florida Statutes sections in addition to those that had been approved by the joint committee staff. 160

The upshot is that each user of the statutes is put to the burden of either standing the cost and inconvenience of conforming to the APA and also to the provision of the agency’s law or undertaking the difficult assessment of the degree of conflict between the two. Presumably, agency counsel and other personnel will in time work out the relationships required within the agency’s statutes. For occasional users of the statutes, the prospect is for confusion without end.

B. Recommendations

As the focus of the present article has been narrow, so should the recommendations be narrowly focused. As the principal thrust of the discussion has been to point up the doctrinal bases for widespread confusion concerning the current status of much of Florida’s statutory law regulating the administrative procedures to be followed by state agencies, the recommendation should be directed toward alleviating that confusion.

1. Correction by Legislative Action

Since the confusion was created by legislative action (perhaps more properly, inaction), the most obvious corrective is by legislative action. The following language of a proposed bill is suggested as appropriate:

A Bill to be Entitled
An Act Relating to the Florida Statutes; reviving certain provisions of the Florida Statutes which were repealed by implication pursuant to section 3, chapter 74-310, Laws of Florida, as having been replaced by that act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. It is the sole purpose of this act to dispel possible

160. The suggested comparison of the work products of the staff of the Joint Administrative Procedure Committee and the house subcommittee is not precise. Some of the differences resulted from amendments to, or repeals of, the subject sections in the 1977 session, for which the reviser’s bill had not been updated. Also, there were legitimate policy differences between the two—for example, the house subcommittee retained numerous statutory cross references to ch. 120 which the reviser and the joint committee staff both marked for deletion as redundant. Nevertheless, the broad picture of disagreement that remains concerning the existence of conflict is instructive.
confusion concerning the present status of the various statutory provisions described in section 2. Therefore, it is the legislative intent simply to restore the affected statutory provisions to the status that would have characterized them had section 3, chapter 74-310, Laws of Florida, never been enacted.

Section 2. All provisions of the Florida Statutes 1973 relating to rule-making, agency orders, administrative adjudication, or judicial review of administrative action, except marketing orders adopted pursuant to chapters 573 and 601, and therefore repealed by implication by section 3, chapter 74-310, Laws of Florida, as having been replaced by that act, and not subsequently repealed or amended by chapter 78-95, Laws of Florida, or other legislative act, including any act passed during the 1980 session, are hereby revived and restored to full force and effect.

Section 3. This act is not intended to affect any statutory provision that does not qualify for revival by it.

Section 4. This act shall take effect upon becoming a law.

The proposed statutory solution has the following features:
1. It constitutes revival by reference and avoids the impossible task of achieving unanimity, or even general agreement, concerning the identification of the specific sections affected. Since Florida's constitutional prohibition against amendment by reference does not refer to revival also, as do the corresponding provisions of some other state constitutions, there is apparently no barrier to this approach.
2. Although the proposed act is drafted to operate prospectively, that would seem to be all that is required in the premises. In any event, the likelihood is that many of the provisions involved have been treated as viable law up until now.
3. The basic purpose is to legitimize the status quo as to the affected provisions.

2. Correction by Judicial Action

A substantial portion of the text was devoted to exploring the Florida precedents for and against the proposition that a repealed provision of the Florida Statutes that is carried forward into the succeeding edition of the Florida Statutes is, by virtue of the legislative enactment of the Florida Statutes into positive law, thereby revived and retained in full force and effect. The conclusion was that, on balance, the precedents provided substantial support for this proposition, but that they were probably not sufficiently consistent and notorious to be relied upon. Of course, this deficiency could

be quickly eliminated by an authoritative holding on that matter by the Florida Supreme Court.

Actually, a judicial declaration of doctrine that would eliminate the present uncertainty as to the status of this body of statute law relating to administrative procedure would in some ways be superior to the legislative solution. Thus, it would not only resolve the present uncertainties, but it would also establish the principle for the future. Moreover, the judicial solution would rest more easily on legislative sensibilities.

The problem, of course, is how to get the question before the court for an authoritative holding. The advisory opinion path is not promising. There is no assurance that the Governor would be sufficiently interested in the particular question to exercise his prerogative of requesting the opinion. There is no assurance that the members of the court would consider the question sufficiently related to the Governor’s executive function to justify their responding to the request. Again, constituting merely the opinions of the individual justices, and not the court itself, an advisory opinion would lack authority as precedent. Finally, and most compelling, it is difficult to see how the justices could deal with this issue without the outcome turning primarily on the construction of the biennial adoption act, which constitutes the so-called reenactment. Time and again, the court has refused to respond to requests for advisory opinions on the basis that its constitutional duty was to advise concerning the constitution, not the statute law.

On the other hand, the prospect for this issue reaching the court by the regular channels of litigation seems relatively favorable. The uniqueness of the present situation relating to the new APA has already been remarked on. However unique the transaction, it now presents many opportunities for such an adjudication. Approximately 170 Florida Statutes sections containing provisions marked for deletion in the reviser’s bill as having been repealed in 1974 were omitted entirely from chapter 78-95, by which the 1978 legislature sought to settle the matter. The only possible basis for their omission was that they were not in such conflict with chapter 120 as to warrant their implied repeal. Assuming then that the reviser’s staff correctly identified these provisions as relating to the named elements of administrative procedure, and assuming also that parties

162. Id. art. IV, § 1(c).
164. See In re Opinion of Supreme Court, 22 So. 681 (Fla. 1897); In re Opinion of Justices, 44 So. 756 (Fla. 1907); In re Advisory Opinion to the Governor, 243 So. 2d 573 (Fla. 1971).
litigant will often have opposing views concerning the appropriateness of the procedural requirements involved, the prospects are fairly good for adjudication of the principle of revival by reenactment.

3. The Principle of Statewide Uniformity

Since it was well beyond the scope of the present paper to delve into the complexities of the questions of the desirability and feasibility of imposing statewide uniformity of administrative procedures upon all state agencies, it is inappropriate to offer firm recommendations on the matter. However, superficial though the foregoing discussion of this phase of the problem has been, it did serve to identify and delineate some of the hardships imposed on the users of the statutes by the partial retreat from the ideal of statewide uniformity originally aspired to.

Professor Levinson and others have pointed out that the Florida act has features that tend to soften the harshness of the uniformity requirement. "First, the Act introduces a new mechanism whereby agencies can request exemption from all or any part of the Act . . . . Second, the Act introduces the informal proceeding for some types of adjudication, while preserving the formal proceeding for others . . . ." Professor Levinson was a member of the Florida Law Revision Council during the period it developed its proposals which were substantially enacted as the new APA.